

See vol. 2733
No. 13143

United States
Court of Appeals
for the Ninth Circuit.

SOUTHERN CALIFORNIA EDISON COM-
PANY, LIMITED, a Corporation,

Appellant,

vs.

LESTER W. HURLEY,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

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PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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THURMAN L. McCORMICK,
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Kansas City, Mo.

In the District Court of the United States for the
Southern District of California, Central Division

Civil Action No. 5187 WM

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-
PANY, LIMITED, a Corporation,

Defendant.

DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES

Pursuant to order for pre-trial hearing herein,
defendant submits herewith its memorandum of the
points of law and the authorities in support thereof
upon which it intends to rely at trial:

I.

The judgment of the United States District Court
in Kansas is not res judicata and does not affect
the rights of defendant in the present action.

Federal Rules of Civil Procedure,
No. 19-B.

II.

The payment by defendant of the dividends accruing to one of the several joint owners of the stock discharged defendant's liability to all of said owners.

California Civil Code,
Sec. 1475.

Cober vs. Connolly,
20 Cal. 2nd, 741, at 744.

Delano vs. Jacoby,
96 Cal. 275, at 278. [21*]

III.

In any event, plaintiff is barred by the statute of limitations from recovering dividends paid on the stock described in Paragraph IV of the complaint more than two years prior to the filing of his action; and as to the dividends on the stock described in Paragraph V, he is barred as to any dividends paid more than four years prior to the filing of his action.

Perkins vs. Benguet, etc.,
55 Cal. App. 2nd, 720 at 770.

IV.

Plaintiff is not entitled to the recovery of interest on any sum prior to the date of his demand upon defendant for payment thereof.

Perkins vs. Benguet, etc.,
55 Cal. App. 2nd, 720 at 765.

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

V.

The failure of plaintiff, after demand to pursue his rights against George E. Burton and the Estate of Elizabeth J. Price, deceased, exonerates this defendant from liability.

California Civil Code,

Sec. 2831.

California Civil Code,

Sec. 2845.

VI.

Plaintiff never became the owner of, and thus entitled to dividends on, any of the stock described in his complaint, because there was no delivery thereof to him by the purported donor, Elizabeth J. Price.

California Civil Code,

Sec. 1147;

Bishop's School vs. Wells,

19 Cal. App. 2nd, 141.

Respectfully submitted.

FULCHER & WYNN,

By /s/ HAROLD G. WYNN,

Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 11, 1946. [22]

[Title of District Court and Cause.]

STIPULATION RE RETRIAL

Now on this 13th day of March, 1951, it is stipulated and agreed in the above-entitled cause by and between respective counsel for Plaintiff and Defendant that:

1. For the purpose of retrial of all issues involved in said cause all evidence heretofore introduced and received by the court, both parol and documentary, shall be considered as before the Court for all purposes for which the same was received by the court, as well as all stipulations heretofore filed in said cause.

2. This stipulation is not intended to cover and does not cover the question of whether or not additional evidence may be presented by either party on the retrial of the cause; but that question is expressly left open for determination by the Court upon said retrial.

Signed and dated this 13th day of March, 1951.

/s/ THURMAN L. McCORMICK,

/s/ HAROLD EASTON,

Attorneys for Plaintiff.

FULCHER & WYNN,

/s/ CAROL G. WYNN,

Attorneys for Defendant.

[Endorsed]: Filed March 16, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AFTER TRIAL FOLLOWING
APPEAL

A new trial of the above-entitled cause having heretofore been ordered following reversal upon appeal [see 183 F. 2d 125], and said cause having come on regularly for trial in the above-named court on March 21, 1951, and plaintiff having then appeared by Messrs. Thurman L. McCormick and Harold Easton, his attorneys, and defendant having then appeared by Messrs. Charles E. R. Fulcher and Carol G. Wynn, its attorneys, and the cause having proceeded to a retrial of the issues; and evidence having been received and the parties having stipulated that: "For the purpose of retrial of all issues involved in said cause all evidence heretofore [34] introduced and received by the court, both parol and documentary, shall be considered as before the Court for all purposes for which the same was received by the court, as well as all stipulations heretofore filed in said cause"; and the cause having been argued and submitted for decision, the court now makes findings of fact and conclusions of law as follows:

Findings of Fact

I.

At the time of the commencement of this action and at all times herein mentioned plaintiff was a citizen and resident of the State of Missouri.

At the time of the commencement of this action and at all times herein mentioned defendant was a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in Los Angeles, California.

The amount in controversy between plaintiff and defendant in this action, exclusive of interest and costs, exceeds \$3,000.00.

Jurisdiction of this court is invoked by reason of the amount in controversy and the diversity of citizenship existing between plaintiff and defendant.

II.

Some years prior to November 19, 1928, William Price and Elizabeth J. Price were married. At the time of this marriage Elizabeth J. Price had two adult children born of a previous marriage: A son named George E. Burton and a daughter, who was plaintiff's mother. Prior to November 19, 1928, plaintiff's mother had died, leaving plaintiff as the sole surviving issue of her body. [35]

For many years prior to November 19, 1928, plaintiff had resided, and at all times hereinafter mentioned continued to reside, in the State of Missouri; and William Price had resided, and at all times hereinafter mentioned until his death continued to reside, in the State of California with plaintiff's grandmother, Elizabeth J. Price.

For some time prior to November 19, 1928, William Price had been the owner of a substantial number of the authorized issued and outstanding

shares of the Series "B" six per cent preferred and the common capital stock of Southern California Edison Company, Limited, a corporation, the defendant herein.

III.

On November 20, 1928, at Los Angeles, California, William Price with the intent to make a gift inter vivos caused the defendant to issue in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, the plaintiff, as joint tenants with full rights of survivorship, certificates numbered AO-59630, AO-69633 and A-8752 to A-8756, inclusive, evidencing ownership of 575 shares of the common capital stock of the defendant corporation, of the par value of \$25.00 per share; and William Price then and there caused the certificates so issued to be delivered to plaintiff's grandmother, Elizabeth J. Price.

That at said time and place said William Price informed defendant in the presence of said Elizabeth J. Price that he expected to arrange for all dividends on said stock to be paid to and retained and used by said Elizabeth J. Price during her lifetime.

IV.

On November 20, 1928, at Los Angeles, California, William Price with the intent to make a gift inter vivos [36] likewise caused the defendant to issue in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, the plaintiff, as joint tenants with full rights of survivorship, certificates numbered AO-86998, AO-87011 and A-10216 evi-

dencing ownership of 191 shares of Series "B" six per cent preferred stock of the defendant corporation, together with certificates numbered AO-59759 and AO-59770 evidencing ownership of 88 shares of the common capital stock of the defendant corporation; and William Price then and there likewise caused the certificates so issued to be delivered to Elizabeth J. Price.

That at said time and place said William Price informed defendant in the presence of said Elizabeth J. Price that he expected to arrange for all dividends on said stock to be paid to and retained and used by said Elizabeth J. Price during her lifetime.

V.

Some time prior to November 19, 1928, Elizabeth J. Price had requested plaintiff to sign two dividend orders in blank on the usual form provided by defendant for such purpose, and plaintiff did gratuitously sign and deliver said dividend order blanks to Elizabeth J. Price in the State of Missouri, but plaintiff then had no knowledge or understanding of the purpose for which Elizabeth J. Price requested his signature or of the use which Elizabeth J. Price intended to make of the documents which the plaintiff then signed.

VI.

On December 11, 1928, Elizabeth J. Price delivered to defendant at Los Angeles, California, one of the dividend order forms mentioned above in Paragraph V, bearing the signatures of Elizabeth

J. Price, George E. Burton and plaintiff, directing that all dividends on the 575 shares of [37] common stock described above in Paragraph III be remitted to Elizabeth J. Price.

Said dividend order was numbered 12742, and was and is in the words and figures following:

Form-Inv. 21-A Rev. 12742

Kindly Sign and Return at Once.

Southern California Edison Company
Dividend Order

Date Nov. 19th, 1928.

Southern California Edison Company,
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to Mrs. Elizabeth J. Price at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley on the books of your company.

Stock how held—

Original Preferred .. Preferred Series A....

Common (575 shares) Preferred Series B....

Signature: Mrs. Elizabeth J. Price.

Address:

Signature: George E. Burton.

Address: 1046 Ann Ave.,
Kansas City, Kansas.

Signature: Lester Hurley.

Address:

Witness:

Signature: Helen Burton.

Address: 1046 Ann Ave., K. C., Kans.

Address for sending dividends: 1301 West 52nd
St., Los Angeles.

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear [38] on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Dec. 11, 1928.

VII.

On December 11, 1928, Elizabeth J. Price delivered to defendant at Los Angeles, California, the second of the dividend order forms mentioned above in Paragraph V, bearing the signatures of Elizabeth J. Price, George E. Burton and plaintiff, directing that all dividends on the 191 shares of Series "B" six per cent preferred and the 88 shares

of common stock described in Paragraph IV be remitted to Elizabeth J. Price.

Said dividend order was numbered 12743, and was and is in the words and figures following:

Form-Inv. 21-A Rev.

12743

Kindly Sign and Return at Once.

Southern California Edison Company
Dividend Order

Date Nov. 22nd, 1928.

Southern California Edison Company,
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to Mrs. Elizabeth J. Price at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley on the books of your company.

Stock how held—

Original Preferred .. Preferred Series A....

Common (88 shares) Preferred Series B....

(191 shares)

Signature: Mrs. Elizabeth J. Price.

Address: 1301 West 52nd St.,

Los Angeles.

Signature: George E. Burton.

Address: 1046 Ann Ave.,
Kansas City, Kansas. [39]

Signature: Lester Hurley.

Address: 5716 Scarritt, K. C., Mo.

Witness:

Signature: R. N. Jones.

Address: 3829 Garfield Ave., K. C., Mo.

Address for sending dividends: 1301 West 52nd
Street, Los Angeles.

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Dec. 11, 1928.

VIII.

William Price died at Los Angeles, California, on January 5, 1929, and Elizabeth J. Price accompanied his remains to the State of Missouri for burial.

IX.

On or about January 19, 1929, at Kansas City, in the State of Kansas, Elizabeth J. Price caused the Brotherhood State Bank of that city to forward to defendant at Los Angeles, California, the certificates for 575 shares of common stock listed above in Paragraph III, together with forms of assignment attached bearing the signatures of Elizabeth J. Price, George E. Burton and plaintiff, and pur-

porting to assign the 575 shares of common stock to "Mrs. Elizabeth J. Price, or George E. Burton."

The certificates with the forms of assignment attached were received by defendant on January 22, 1929, and the assignments were thereupon returned to the Brotherhood State Bank with the request by defendant that the signatures of the purported transferors be guaranteed.

On February 1, 1929, defendant again received the [40] forms of assignment with the signatures of Elizabeth J. Price and George E. Burton thereon guaranteed by Brotherhood State Bank. On February 7, 1929, defendant again returned the forms of assignment with a letter suggesting that the transferee designation be changed to joint tenancy form and again requesting that the purported signature of plaintiff be guaranteed. In response to this letter the Brotherhood State Bank altered the forms of assignment by changing the transferee designation from "Mrs. Elizabeth J. Price, or George E. Burton" to "Elizabeth J. Price and George E. Burton, as joint tenants, with full rights of survivorship"; and the bank thereupon added to each form of assignment a guarantee of the genuineness of the signature of plaintiff.

This alteration of the transferee designation was made by the Brotherhood State Bank without any authority from plaintiff and without the knowledge or consent of plaintiff.

Thereafter and on or about February 19, 1929, defendant received the forms of assignment from the Brotherhood State Bank with the transferee

designation altered and with the signatures of the transferors guaranteed as aforesaid, and defendant thereupon transferred the 575 shares of common stock to Elizabeth J. Price and George E. Burton as joint tenants.

Thereupon and at all times thereafter from on or about February 19, 1929, until following entry of the judgment of the United States District Court for the District of Kansas on July 26, 1945, hereinafter mentioned, none of the 575 shares of common stock appeared upon the records of defendant in the name of plaintiff.

X.

Thereafter and on or about March 18, 1929, Elizabeth J. Price and George E. Burton delivered [41] to defendant a dividend order, numbered 13157, on defendant's usual form, signed by Elizabeth J. Price and George E. Burton and directing that all dividends on common stock standing in the name of Elizabeth J. Price and George E. Burton as joint tenants be paid to Elizabeth J. Price until such order be revoked.

XI.

Thereafter from time to time defendant declared and set aside as payable to its shareholders certain dividend and stock rights.

The dividends so declared and set aside to the holder or holders of the 575 shares of common stock described above in Paragraph III during the period from February 15, 1929, until December 27, 1943,

were declared and set aside on the dates and in the amounts hereinafter set forth:

Item	Year	Amount of Dividend
1	1929 (last three quarters).....	\$ 862.50
2	1930.....	1,150.00
3	1931.....	1,150.00
4	1932.....	1,150.00
5	1933.....	1,150.00
6	1934.....	1,006.25
7	1935.....	862.50
8	1936.....	862.50
9	1937.....	934.37
10	1938.....	1,006.25
11	1939.....	1,006.25
12	1940.....	1,092.50
13	1941.....	1,006.25
14	1942.....	1,006.25
15	1943 (to Dec. 27).....	862.50
16—The aggregate value of all dividends so declared and set aside was and is		\$15,108.12

The stock rights so declared and set aside to the holder or holders of the 575 shares of common stock described above in Paragraph III during the period from February 15, 1929, until December 27, 1943, were as follows:

17—In 1929, a total of 575 common stock rights then having a value of \$3.075

per right, or a total value of.....\$ 1,768.13
were so declared and set aside

18—In 1930, a total of 575 common stock
rights then having a value of \$3.70
per right, or a total value of.....\$ 2,127.50
were so declared and set aside

19—In 1931, a total of 575 common stock
rights then having a value of \$2.53
per right, or a total value of.....\$ 1,454.75
were so declared and set aside

20—The aggregate value of all stock
rights so declared and set aside was
and is\$ 5,350.38

21—The aggregate value of all dividends
and all stock rights so declared and
set aside was and is.....\$20,458.50

XII.

The dividends and stock rights listed above in Paragraph XI in the total sum of \$20,458.50 were paid and delivered by defendant to Elizabeth J. Price under dividend order No. 13157 during the period from February 19, 1929, until the death of Elizabeth J. Price on December 27, 1943. [43]

That at the time of the payment by defendant to Elizabeth J. Price of each of the dividends and stock rights aforesaid, defendant had reason to know that Elizabeth J. Price alone would benefit from such payment and performance, and that Elizabeth J. Price would not account to or pay or

otherwise distribute to either George E. Burton or plaintiff any part of such payment and performance.

XIII.

At the time of the issuance of the certificates for 575 shares of common stock described above in Paragraph III, on November 20, 1928, plaintiff was a minor of the age of twenty years, and had no actual notice or knowledge of the issuance of any of the certificates. The certificates were never in the possession or under the control of plaintiff, and plaintiff did not know of his ownership of any interest in any stock of the Southern California Edison Company, Limited, and did not know of the nature or purpose or effect or of the use made of the dividend order blanks signed by plaintiff at the request of Elizabeth J. Price, as stated above in Paragraph V, and did not know of the existence of any assignment of his interest in the 575 shares of common stock to Elizabeth J. Price and George E. Burton, and did not know of the declaration or payment of any dividends or of the issuance of any stock rights on the 575 shares of common stock, and had no knowledge of any of the facts set forth above in Paragraphs III, VI, IX, X, XI and XII, until March 18, 1944, except as in these findings expressly found.

For many years prior to 1928, plaintiff had great trust and confidence in Elizabeth J. Price and George E. Burton, and such feeling of trust and confidence on the part of plaintiff continued until the death of his grandmother on December 27, 1943.

Throughout this period both Elizabeth J. Price and [44] George E. Burton were well aware of and freely accepted the great trust and confidence reposed in each of them by plaintiff, and a fiduciary relationship in fact existed in all the dealings throughout this period between Elizabeth J. Price and plaintiff and George E. Burton and plaintiff.

From time to time throughout the years from 1928, until the death of Elizabeth J. Price on December 27, 1943, Elizabeth J. Price and George E. Burton concealed from plaintiff all the facts set forth above in Paragraphs III and IV, and concealed from plaintiff all the facts with respect to his ownership of any interest in any stock of the defendant corporation, and during this period Elizabeth J. Price from time to time represented to plaintiff that he might receive from her estate upon her death certain stock; that whatever he might so receive would depend upon the will and favor of his grandmother; that she resented any inquiry or prying by plaintiff into her financial affairs or business arrangements.

Plaintiff believed these representations and in reliance upon them signed the blank dividend orders at the request of Elizabeth J. Price, as set forth above in Paragraph V, and signed the forms of assignment mentioned above in Paragraph IX, without inquiry as to the reason for his signature and without any knowledge or understanding as to the purpose or effect of his signature.

As a further result of plaintiff's reliance upon

these representations, and of the concealment by Elizabeth J. Price and George E. Burton of plaintiff's interest in any stock of the defendant corporation, plaintiff made no inquiry concerning the stock of defendant or any other financial affairs or arrangements of either William Price or Elizabeth J. Price until after the death of his grandmother on December 27, 1943. [45]

XIV.

On March 20, 1944, promptly following his first discovery and knowledge on March 18, 1944, of any of the facts set forth above in Paragraphs III, VI, IX, X, XI or XII, plaintiff disaffirmed all the aforementioned transfers and dividend orders theretofore signed by him.

Thereafter and on June 2, 1944, George E. Burton commenced an action in the United States District Court for the District of Kansas, entitled "George E. Burton, plaintiff, v. Lester W. Hurley and Southern California Edison Company, Limited, a corporation, defendants," and numbered 4974 on the records of that court. A copy of the complaint in said action is hereto attached, marked Exhibit "A" and incorporated by reference herein.

Thereafter the defendant herein appeared in said Kansas action and moved to quash the service of process upon it as a party defendant therein, upon the ground that Southern California Edison Company, Limited, a corporation, was not present in the District of Kansas and had not been served with process in the District of Kansas. Upon the hear-

ing of this motion the United States District Court for the District of Kansas entered an order quashing the purported service of process upon the Southern California Edison Company, Limited, a corporation, as a party defendant in that action.

Thereafter and on or about July 11, 1944, plaintiff herein appeared as party defendant in said Kansas action and filed therein his answer and cross-petition, a copy of which is hereto attached, marked Exhibit "B" and incorporated by reference herein.

Thereafter George E. Burton as plaintiff in said Kansas action filed his answer to the cross-petition of Lester W. Hurley as defendant therein, a copy of which answer [46] to cross-petition is hereto attached, marked Exhibit "C" and incorporated by reference herein.

XV.

Thereafter the Kansas action proceeded to a trial of the issues joined by the pleadings on the part of the plaintiff therein, George E. Burton, and the plaintiff herein, Lester W. Hurley, copies of which are hereto attached and marked Exhibits "A," "B" and "C" as stated above.

Following trial of those issues, the United States District Court for the District of Kansas, made and filed written findings of fact and conclusions of law in said action, a copy of which is hereto attached, marked Exhibit "D" and incorporated by reference herein.

Thereafter and on July 26, 1945, the United

States District Court for the District of Kansas entered its judgment in said action in favor of the defendant therein and plaintiff herein, Lester W. Hurley, and against the plaintiff therein, George E. Burton. In and by said judgment it was ordered, adjudged and decreed by the court that the plaintiff herein, Lester W. Hurley, is the owner of an undivided one-half ($\frac{1}{2}$) interest in and to five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited, described above in Paragraph III. A copy of the judgment in the Kansas action is hereto attached, marked Exhibit "E" and incorporated by reference herein.

Prior to the commencement of plaintiff's action in this court the above-mentioned judgment of the Kansas court had become and was final.

XVI.

In the above-mentioned Kansas action, the United States District Court for the District of Kansas found and adjudicated that none of the assignments described above in [47] Paragraph IX, purporting to have been executed by plaintiff herein covering his interest in the 575 shares of common stock described above in Paragraph III, "bore the true and genuine signature of Lester W. Hurley, but that each of said signatures of Lester W. Hurley appearing thereon is a forgery."

XVII.

All the dividends and stock rights listed above in Paragraph XI were declared and set aside, and were paid and delivered by defendant to Elizabeth J. Price, without any notice to plaintiff and without any knowledge or authorization or consent on the part of plaintiff other than as in these findings expressly found.

At all times mentioned above in Paragraph XI, plaintiff was the owner of an undivided one-third interest in the 575 shares of common stock described above in Paragraph III, and was entitled to receive one-third of all dividends and stock rights paid and delivered by defendant to Elizabeth J. Price, as stated above in Paragraph XII.

XVIII.

On October 15, 1945, plaintiff made written demand on defendant herein to pay to plaintiff one-third of the amount of all cash dividends, and one-third of the value of all stock rights declared and set aside to the holder or holders of the 575 shares of common stock described above in Paragraph III, to wit, the dividends and stock rights listed and described above in Paragraphs XI and XII, together with legal interest thereon.

In response to plaintiff's demand, defendant requested time to investigate, but no payment has been made to plaintiff.

XIX.

During the period from the receipt by defendant of [48] dividend order No. 12743 on December 11,

1928, as set forth above in Paragraph VII, until the death of Elizabeth J. Price, defendant from time to time declared and set aside as payable to its shareholders certain dividends and stock rights.

The dividends so declared and set aside during that period to the holder or holders of the 191 shares of Series "B" six per cent preferred stock described above in Paragraph IV were as follows:

Item	Year	Amount of Dividend
1	1929	\$ 286.50
2	1930	286.50
3	1931	286.50
4	1932	286.50
5	1933	286.50
6	1934	286.50
7	1935	286.50
8	1936	286.50
9	1937	286.50
10	1938	286.50
11	1939	286.50
12	1940	286.50
13	1941	286.50
14	1942	286.50
15	1943 (to Dec. 27)	286.50

16—The aggregate value of all dividends

so declared and set aside was and is..\$4,297.50

The dividends so declared and set aside during that

period to the holder or holders of the 88 shares of common stock described above in Paragraph IV were as follows:

Item	Year	Amount of Dividend
1	1929	\$ 176.00
2	1930	176.00
3	1931	176.00
4	1932	176.00
5	1933	176.00
6	1934	154.00
7	1935	132.00
8	1936	132.00
9	1937	143.00
10	1938	154.00
11	1939	154.00
12	1940	167.20
13	1941	154.00
14	1942	154.00
15	1943 (to Dec. 27)	132.00

16—The aggregate value of all dividends

so declared and set aside was and is..\$2,356.20

The stock rights so declared and set aside during that period to the holder or holders of the 88 shares of common stock described above in Paragraph IV were as follows:

17—In 1929, a total of 88 common stock

rights then having a value of \$3.075

per right, or a total value of.....\$ 270.60

were so declared and set aside

18—In 1930, a total of 88 common stock rights then having a value of \$3.70 per right, or a total value of.....\$ 325.60 were so declared and set aside

19—In 1931, a total of 88 common stock rights then having a value of \$2.53 per right, or a total value of.....\$ 222.54 were so declared and set aside

20—The aggregate value of all stock rights so declared and set aside was and is..\$ 818.84

21—The aggregate value of all dividends and all stock rights so declared and set aside was and is.....\$3,175.04

XX.

The dividends and stock rights in the total sum of \$3,175.04, described above in Paragraph XIX, were paid to and delivered by defendant to Elizabeth J. Price under dividend order No. 12743 during the period from December 11, 1928, until the death of Elizabeth J. Price on December 27, 1943.

That at the time of the payment by defendant to Elizabeth J. Price of each of the dividends and stock rights aforesaid, defendant had reason to know that Elizabeth J. Price alone would benefit from such payment and performance, and that Elizabeth J. Price would not account to or pay or otherwise distribute to either George E. Burton or plaintiff any part of such payment and performance.

XXI.

At all times since November 20, 1928, plaintiff's name, together with his post office address, has appeared on the records of defendant as one of the owners of the 191 shares of Series "B" six per cent preferred and the 88 shares of common capital stock described above in Paragraph IV.

Defendant did not, on November 20, 1928, or at any time thereafter until following plaintiff's disaffirmance on March 20, 1944, have actual notice or knowledge of the fact, nor did defendant have any reason to believe, that plaintiff was a minor at the time he signed dividend orders No. 12742 and No. 12743 mentioned above in Paragraph V, and at the time he signed the forms of assignment of the 575 shares of common capital stock mentioned above in Paragraph IX. [51]

XXII.

All the dividends and stock rights listed above in Paragraph XIX were declared and set aside, and were paid and delivered by defendant to Elizabeth J. Price without any notice at any time to plaintiff and without any knowledge or authorization or consent on the part of plaintiff, other than in these findings expressly found.

At all times mentioned above in Paragraph XIX plaintiff was the owner of an undivided one-third interest in the 191 shares of Series "B" six per cent preferred stock and the 88 shares of common stock, and was entitled to receive one-third of all dividends and stock rights declared and set aside,

and later paid and delivered by defendant to Elizabeth J. Price, as stated above in Paragraph XX.

XXIII.

At the time of the issuance of the certificates for 191 shares of Series "B" six per cent preferred stock and 88 shares of common stock referred to above in Paragraph IV, on November 20, 1928, plaintiff was a minor of the age of twenty years, and had no actual notice or knowledge of the issuance of any of the certificates. The certificates were never in the possession or under the control of plaintiff, and plaintiff did not know of his ownership of any interest in any stock of the Southern California Edison Company, Limited, and did not know of the nature or purpose or effect or of the use made of the dividend order blanks signed by plaintiff at the request of Elizabeth J. Price, as stated above in Paragraph V, and did not know of the declaration or payment of any dividends or of the issuance of any stock rights on the 191 shares of Series "B" six per cent preferred stock or the 88 shares of common stock, and had no knowledge of any of the facts set forth above in Paragraphs IV, VII, XIX and XX, until March 18, 1944. [52]

XXIV.

On March 20, 1944, promptly following his first discovery and knowledge on March 18, 1944, of any of the facts set forth above in Paragraphs IV, VII, XIX or XX, plaintiff disaffirmed all the aforementioned transfers and dividend orders theretofore signed by him.

XXV.

On October 15, 1945, plaintiff made written demand on defendant to pay plaintiff one-third of all the cash dividends, together with one-third of the value of all stock rights, declared and set aside on the 191 shares of Series "B" six per cent preferred stock and the 88 shares of common stock, to wit, the dividends and stock rights listed and referred to in Paragraphs XIX and XX above; but the defendant has failed and refused to pay the same or any part thereof.

Prior to the commencement of this action, on March 6, 1946, plaintiff demanded of defendant that defendant account for and deliver to plaintiff all dividends and stock rights declared and set aside by defendant for the owners of the 121 shares of Series "B" six per cent preferred stock and 88 shares of common stock described above in Paragraph IV, but defendant has failed and refused to account for or pay or deliver any part thereof.

Thereafter and on June 5, 1946, defendant made written demand upon plaintiff that plaintiff proceed against the Estate of Elizabeth J. Price, deceased, and against George E. Burton and that plaintiff pursue his remedy against the Estate of Elizabeth J. Price, deceased, and George E. Burton, and each of them, and defendant then and there informed plaintiff that in the event plaintiff failed so to pursue his remedy, defendant would deem itself exonerated to the extent to which it was thereby prejudiced. [53] Plaintiff has refused to proceed as

requested, but the court finds that defendant has not been prejudiced thereby.

XXVI.

That plaintiff was a minor at the time he signed dividend orders No. 12742 and No. 12743, and plaintiff received no consideration for the execution of either of the dividend orders, and the nature of the documents and the purpose for which they were to be used was concealed from the plaintiff at the time he signed said dividend orders and thereafter. That plaintiff's disaffirmance of the dividend orders under the circumstances hereinabove set forth in these findings of fact was made within a reasonable time after reaching his majority.

XXVII.

That defendant had no actual knowledge of the fraud hereinbefore found to have been perpetrated upon Lester W. Hurley by his grandmother, either at the time said fraud was perpetrated or thereafter; and the court further finds that defendant had no reason to know or believe, other than as found above in Paragraphs XII and XX, that any fraud was being, or had been so perpetrated.

XXVIII.

That under the respective dates of January 25, 1929; December 27, 1929, and December 19, 1930, resolutions of the Board of Directors of the Southern California Edison Company, Ltd., were adopted authorizing issuance to the common and preferred

stockholders of this corporation of record on the respective dates of March 29, 1929; February 28, 1930, and February 27, 1931, of the stock rights described in Paragraph XI, items 17, 18, 19, 20 and 21 and in Paragraph XIX, items 17, 18, 19, 20 and 21. [54]

That said respective resolutions further provided that warrants representing each stockholder's right to subscribe for and purchase said additional shares be issued in the name of the stockholder and mailed or delivered on or before April 22, 1929; March 25, 1930; March 25, 1931, together with a letter setting forth the terms and conditions on which the said right to subscribe might be exercised, as set out in said resolutions, to each stockholder having such right of record on March 29, 1929; February 28, 1930, and February 27, 1931; and further provided that all of said warrants representing right to subscribe for and purchase full shares be issued in the name of the stockholder and be assignable by endorsement and delivery of said warrant.

Conclusions of Law

I.

The title to the 575 shares of common stock described in Paragraph III of the findings of fact was litigated and fully and finally adjudicated in that certain action in the United States District Court for the District of Kansas, entitled "George E. Burton, plaintiff, v. Lester W. Hurley, defendant," and numbered 4974; and the findings of the

United States District Court for the District of Kansas that each of the signatures "Lester W. Hurley" appearing on the forms of assignment described above in Paragraph IX of the findings of fact is a forgery and that none of the purported assignments bear the true and genuine signature of the plaintiff herein is final and res judicata as between the plaintiff herein and George E. Burton; but neither that finding nor the judgment of the United States District Court for the District of Kansas decreeing plaintiff to be "the owner of an undivided one-half ($\frac{1}{2}$) interest in and to five hundred seventy-five (575) shares [55] of common stock in the Southern California Edison Company, Limited," is res judicata as between plaintiff and defendant herein. [See *Hurley v. Southern California Edison Co.*, 183 F. 2d 125, 134-136 (9th Cir. 1950); cf. *Perkins v. Benguet Mining Co.*, 55 Cal. App. (2d) 720, 747-53, 132 P. (2d) 70 (1942); *Commercial Nat. Bank v. Alleway*, 207 Iowa 419, 223 N.W. 167 (1929).]

II.

The finding of the United States District Court for the District of Kansas, "That the dividend order, dated November 19, 1928, and filed with the Southern California Edison Company, Limited, on December 11, 1928, does not bear the true and genuine signature of Lester Hurley, but that the purported signature of Lester Hurley appearing thereon is a forgery," being dividend order No. 12742 set forth above in Paragraph VII of the

findings of fact, must be considered a gratuitous finding of fact and therefore not *res judicata*, since the validity of dividend order No. 12742 was not placed in issue by the pleadings in that action and was not a matter necessary to be adjudicated in determining that action. [Garwood v. Garwood, 29 Cal. 514 (1866); Lang v. Lang, 182 Cal. 765, 768, 190 Pac. 181 (1920); Hutchinson v. Reclamation District, 81 Cal. App. 427, 437, 254 Pac. 606 (1927); cf. Baar v. Smith, 201 Cal. 87, 99 Pac. 827 (1927).]

III.

According to the law of California which governs this case [Erie R.R. Co. v. Thompkins, 304 U.S. 64, 78 (1938)], the validity of the dividend orders and of the assignments of the 575 shares of common stock are to be determined by the law of Missouri where plaintiff executed them. [Fenton v. Edwards, 125 Cal. 43, 58 Pac. 320 (1899); Calif. Civ. Code, § 3453; cf. Restatement, Conflict of Laws, §§ 49, 255, 256, 283.] [56]

IV.

Execution by plaintiff of dividend orders No. 12742 and No. 12743 and the forms of assignment of the 575 shares of common stock constituted acts of a minor which were subject to disaffirmance, under both the law of California and the law of Missouri, at the election of the minor within a reasonable time after reaching his majority.

“The effect of such a disaffirmance, when made, is the same as if the act disaffirmed had never occurred,—it is deemed void *ab initio*. Flittner v.

Equitable Life Assur. Soc., 30 Cal. App. 209, 157 P. 630. The net effect is that one who deals with an infant does so at his peril, and may suffer loss through having to pay the same amount over again after disaffirmance. *Pollock v. Industrial Accident Commission*, 5 Cal. 2d 205, 54 P. 2d 695. Such is the law generally. See *Sternlieb v. Normandie Nat. Securities Corp.*, 263 N.Y. 245, 188 N.E. 726, 90 A.L.R. 1437. It is the law of Missouri. *Robison v. Floesch Const. Co.*, 291 Mo. 34, 236 S.W. 332, 20 A.L.R. 1239. The infant's disaffirmance renders his contract 'void ab initio.' *Windisch v. Farrow*, Mo. App., 159 S.W. 2d 392; *Phillips v. Savings Trust Co.*, 231 Mo. App. 1178, 85 S.W. 2d 923." [*Hurley v. Southern California Edison Co.*, *supra*, 183 F. 2d at 132.]

V.

Inasmuch as plaintiff was a minor at the time he signed dividend orders No. 12742 and No. 12743 mentioned above in Paragraph V, and at the time he signed the forms of assignment of the 575 shares of common stock mentioned above in Paragraph IX, and inasmuch as plaintiff received no consideration for the execution of any of the writings, and the nature of the documents and the purpose for which they were to be used was concealed from plaintiff at the time he signed the same and [57] thereafter, plaintiff's disaffirmance thereof under the circumstances hereinabove set forth in the findings of fact was made within a reasonable time after reaching his majority.

“What constitutes a ‘reasonable time’ depends upon the circumstances of each particular case. *Hastings v. Dollarhide*, 24 Cal. 195. The reason for this grant of a reasonable time was stated in *Goodnow v. Empire Lumber Co.*, 31 Minn. 468, 18 N.W. 283, 284, 47 Am. Rep. 798, as follows: ‘For this purpose of protection the law gives them an opportunity, after they have become capable of judging for themselves, to determine whether such acts or obligations are beneficial or prejudicial to them, and whether they will abide by or avoid them.’ Under the circumstances of this case, Hurley had no opportunity to exercise any judgment upon the matter until he learned he had some interest in the stock. Until then, a reasonable time had not elapsed.” [*Hurley v. Southern California Edison Co.*, *supra*, 183 F. 2d at 132.]

VI.

Accordingly, from November 20, 1928, until the death of Elizabeth J. Price on December 27, 1943, plaintiff was the owner of an undivided one-third interest in the 575 shares of common stock described above in Paragraph III of the findings of fact, and was likewise the owner of an undivided one-third interest in the 191 shares of Series “B” six per cent preferred stock and the 88 shares of common stock described above in Paragraph IV of the findings of fact.

And since the death of Elizabeth J. Price on December 27, 1943, plaintiff has been, and at the commencement of this action was the owner of an undivided one-half interest in the 575 shares of

common stock described above in Paragraph III of the findings of fact, and was likewise the owner of an undivided one-half interest in the 191 shares of Series "B" [58] six per cent preferred stock and the 88 shares of common stock described above in Paragraph IV of the findings of fact.

VII.

Accordingly, from November 20, 1928, until the death of Elizabeth J. Price on December 27, 1943, plaintiff was the owner of, and was entitled to receive and be paid, one-third of all dividends declared and paid on the 575 shares of common stock described above in Paragraph III of the findings of fact, and on the 191 shares of preferred stock and 88 shares of common stock described above in Paragraph IV of the findings of fact, together with one-third of all stock rights declared and issued to the owners of said stock.

VIII.

Neither the four-year period of limitations specified in subsection 1 of Sec. 337, nor the two-year period of limitations specified in subsection 1 of Sec. 339 of the California Code of Civil Procedure commenced to run against plaintiff's cause of action asserted herein until after October 15, 1945, the date of plaintiff's demand of defendant for payment of his one-third share of all dividends and stock rights. Accordingly, plaintiff's cause of action herein is not barred by the applicable California statutes of limitations. [*Macdermott v. Hayes*, 175

Cal. 95, 118, 170 Pac. 616 (1917); *Ralston v. Bank*, 112 Cal. 208, 44 Pac. 476 (1896); cf. *Perkins v. Benguet Mining Co.*, supra, 55 Cal. App. (2d) at 770.]

IX.

The failure of plaintiff, after demand by defendant, to pursue his rights against George E. Burton and the Estate of Elizabeth J. Price, deceased, does not exonerate defendant from liability in this action.

X.

Payment by defendant to Elizabeth J. Price, as a [59] co-obligee of plaintiff, did not operate to extinguish defendant's obligations in accordance with the provisions of § 1475 of the Civil Code of the State of California because defendant, the obligor, had reason to know that Elizabeth J. Price, the recipient, would alone receive benefit from the performance, and would not account to either of her co-obligees, George E. Burton and plaintiff; and neither the dividends nor stock rights constituted "deposits" in the hands of defendant and are not therefore controlled by the provisions of the California Civil Code relating to deposits. [*Hurley v. Southern California Edison Co.*, supra, 183 F. 2d at 128-131, 133-134.]

XI.

Since, for the reasons above stated, § 1475 of the California Civil Code is not applicable to discharge the obligation of defendant in this case, plaintiff is entitled to recover one-third of all dividends de-

clared and set aside by defendant on the 575 shares of common stock described above in Paragraph III of the findings of fact, to wit, the sum of \$5,036.04; together with the value of one-third of all stock rights declared and set aside to the owners of the 575 shares of stock, to wit, the sum of \$1,783.46; together with one-third of all dividends declared and set aside by defendant on the 191 shares of preferred stock, to wit, the sum of \$1,432.50, and the 88 shares of common stock described above in Paragraph IV, to wit, the sum of \$785.40; together with one-third of the value of all stock rights declared and set aside to the owners of the 88 shares of common stock, to wit, the sum of \$272.95; or the total sum of \$9,310.35, together with interest thereon at the rate of seven per cent per annum from the date of plaintiff's demand on defendant for payment, October 15, 1945. [See *Telegraph Co. v. Davenport*, 97 U.S. 369 (1878); *Cooper v. Spring Valley Water Co.*, 171 Cal. 158, 153 Pac. 936 (1915); [60] *Taft v. Presidio & F.R. Co.*, 84 Cal. 131, 24 Pac. 436 (1890).]

Let judgment be entered for plaintiff accordingly.
April 26, 1951.

/s/ WM. C. MATHES,

United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 26, 1951. [61]

United States District Court for the Southern
District of California, Central Division

No. 5187-WM Civil

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-
PANY, LIMITED, a Corporation,

Defendant.

JUDGMENT

The Court having made and filed findings of fact and conclusions of law after trial following appeal herein, and having ordered entry of judgment in accordance therewith,

It Is Now Ordered, Adjudged and Decreed that plaintiff, Lester W. Hurley, have and recover of and from defendant, Southern California Edison Company, Limited, a corporation, the sum of \$9,310.35 with interest thereon at the rate of seven per cent per annum from October 15, 1945, to wit, \$12,912.91, together with plaintiff's costs in this action incurred, to be taxed by the Clerk in the sum of \$114.95.

April 26, 1951.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed April 26, 1951.

Entered April 26, 1951. [88]

[Title of District Court and Cause.]

MOTION OF DEFENDANT FOR NEW TRIAL

To the above-entitled Court and to the Clerk thereof, and to above-named plaintiff and Harold Easton and Thurman L. McCormick, his attorneys:

Comes now the defendant, Southern California Edison Company, Limited, a corporation, and moves the above-entitled Court for an order vacating the Findings of Fact and the Conclusions of Law and the Judgment dated on or about April 26, 1951, and granting a new trial of the above-entitled action, upon the following grounds:

(a) Insufficiency of the evidence to justify the decision and judgment; and

(b) Errors in law occurring at the trial and in the Conclusions of Law.

Defendant hereby specifies the particulars wherein the [89] evidence is claimed to be insufficient to justify the decision and judgment as follows:

1. To justify a finding that William Price informed defendant "that he expected to arrange for all dividends on said stock to be paid to and retained and used by said Elizabeth J. Price during her lifetime." (Findings of Fact III and IV.)

2. To justify a finding that defendant had reason to know that Elizabeth J. Price alone would benefit from payment and performance to her of said dividends and stock rights and that she would not account to or pay otherwise distribute to plain-

tiff any part of such payment or performance. (Finding of Fact XII.)

3. To justify finding that plaintiff did not know of nature or purpose or effect or of use to be made of dividend orders and did not know of existence of assignment of his interest in 575 shares of common stock. (Finding of Fact XIII.)

4. To justify finding that dividend orders signed by plaintiff were "blank dividend orders" at the time plaintiff signed them. (Findings of Fact V, XIII and XXIII.)

5. To justify finding that on March 20, 1944, plaintiff disaffirmed "all the aforementioned transfers and dividend orders." (Finding of Fact XIV.)

6. To justify finding plaintiff was the owner of an undivided one-third interest in the 575 shares of common stock and was entitled to receive one-third of all dividends and stock rights paid and delivered to Elizabeth J. Price. (Finding of Fact XVII.)

7. To justify finding defendant had reason to know that Elizabeth J. Price alone would benefit from payments referred to in paragraph XX and would not account to or pay or otherwise distribute to plaintiff any part of such payment. (Finding of Fact XX.) [90]

8. To justify a finding that plaintiff made any disaffirmance on March 20, 1944. (Finding of Fact XXI.)

9. To justify a finding plaintiff was entitled to receive one-third of all dividends and stock rights paid and delivered by defendant to Elizabeth J. Price as stated in paragraph XX of Findings of Fact. (Finding of Fact XXII.)

10. To justify finding that plaintiff did not know of his ownership of any interest in any stock of Southern California Edison Company, Limited, and did not know of the nature or purpose or effect or the use made of the dividend order blanks signed by him. (Finding of Fact XXIII.)

11. To justify finding that on March 20, 1944, plaintiff disaffirmed all of the aforementioned transfers and dividend orders signed by him. (Finding of Fact XXIV.)

12. To justify a finding, (1) that plaintiff disaffirmed any dividend orders and (2) that any disaffirmance was made within a reasonable time after reaching his majority. (Finding of Fact XXVI.)

13. To justify a finding that the facts found in paragraphs X and XX gave any reason to defendant to know or believe any fraud was being or had been perpetrated on plaintiff. (Finding of Fact XXVII.)

Defendant further specifies as errors of law occurring at the trial and in the Conclusions of Law, as follows:

1. The Court erred in its holding that the validity of the dividend orders and of the assignments of the 575 shares of common stock are to be determined by the law of Missouri. (Conclusion of Law III.)

2. The Court erred in its holding that the execution by plaintiff of dividend orders No. 12742 and No. 12783 and the forms of assignment of the 575 shares of common stock by a minor, were subject to disaffirmance by the minor within a [91] reasonable time after reaching his majority. (Conclusion of Law IV.)

3. The Court erred in holding that plaintiff disaffirmed either the dividend orders or the assignments within a reasonable time after reaching his majority. (Conclusion of Law V.)

4. Court erred in holding that from November 20, 1928, until December 27, 1943, plaintiff was the owner of an undivided one-third interest in 575 shares of common stock. (Conclusion of Law VI.)

5. Court erred in holding that from November 20, 1928, until December 27, 1943, plaintiff was the owner of, and entitled to receive and be paid one-third of all dividends declared and paid on 575 shares of common stock and on the 191 shares of preferred stock and 88 shares of common stock referred to in paragraphs III and IV of findings of fact, together with one-third of all stock rights declared and issued to the owners of said stock. (Conclusion of Law VII.)

6. Court erred in holding that neither the four-year period of limitations nor the two-year period of limitations commenced to run against plaintiff's cause of action until after October 15, 1945, and that plaintiff's cause of action is not barred by the applicable California Statute of Limitations. (Conclusion of Law VIII.)

7. Court erred in holding that the payments made to Elizabeth J. Price, plaintiff's co-obligee, did not operate to extinguish defendant's obligations to plaintiff in accordance with the provisions of Sec. 1475 C.C. of California. (Conclusion of Law X.)

8. Court erred in holding plaintiff is entitled to recover various sums specified in paragraph XI of Conclusions of Law.

Dated May 4, 1951.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant. [92]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES ON MOTION FOR NEW TRIAL

1. In the absence of knowledge or reason to know on part of defendant (1) that plaintiff had not desired payment of all dividends to be made to Mrs. Price and (2) that Mrs. Price was not disposing of the dividends thus paid to her as agreed to between the joint tenants, (and defendant had no

such knowledge or reason to so know, but on the contrary justifiably had reason to believe and know (1) that plaintiff did so consent, and (2) was therefore acquiescing in whatever disposition of the dividends Mrs. Price was making), defendant extinguished its obligation to the joint tenants by payment of dividends to Mrs. Price.

Sec. 1475 C.C. of California.

Sec. 131 Restatement Contracts.

Cober v. Connally,

20 Cal. (2d) 741. [93]

2. Joint tenants may agree between themselves as to the disposition of the income from the joint tenancy property.

Hammond v. McArthur,

30 Cal. (2d) 512, 516 (5), 183 P. (2d) 1, 3;

Wells v. Wells,

64 Cal. App. (2d) 113, 148 P. (2d) 126;

48 C.J.S. 933, Sec. 10.

3. As against this defendant, plaintiff has no right of disaffirmance because of his minority or fraud of others of his dividend orders or of his assignments of the 575 shares of common stock, in so far as dividends and stock rights paid by defendant between the time of assignments and any notice by plaintiff to defendant of rescission.

Casey v. Kastel,

237 N.Y. 305, 142 N.E. 671, 31 A.L.R. 995;

Carolina T. & T. Co. v. Johnson,
168 F. (2d) 489, 3 A.L.R. (2d) 870.
Restatement Contracts, Sec. 170(2) C.

4. Law of California alone determines the effect of the dividend orders and the assignments.

Sections 183, 355 and 366.

Restatement Conflict of Laws,
Sec. 1646 C.C. of California.

5. The gift to plaintiff of the stock as one of three joint tenants was made to him subject to the condition that the dividends were to be paid to Mrs. Price under dividend orders until such orders were revoked and with discretion vested in Mrs. Price as to disposition of the dividends paid to her in pursuance of such orders.

38 C.J.S. 817, Sec. 38;

Lynch v. Lynch,
124 Cal. App. 454, 12 P. (2d) 741;

Gordon v. Barr,
13 Cal. (2d) 596, 91 P., (2d) 101;

Calkins v. Equitable,
B. & L. Ass'n., 126 Cal. 531, 59 P. 30;

Ruiz v. Dow,
113 Cal. 490, 45 P. 867; [94]

Jean v. Jean,
207 Cal. 115, 277 P. 313;
121 A.L.R. 425 Annotation.

6. Plaintiff must have acquired knowledge of the fact that he had an interest in the ownership of stock in defendant Company when he, at the age of twenty years, signed the dividend orders and the assignments of the 575 shares of common stock attached to the stock certificates.

66 C.J.S. 651;

20 Cal. Jur. 241 Sec. 10.

7. As plaintiff knew, when he reached maturity, of his ownership of interest in stock of defendant Company, his right, if any, to disaffirm the dividend orders and the assignments within a reasonable time, began to run upon his reaching maturity, and his disaffirmance, if any, was not made within a reasonable time. Such reasonable time may not exceed the period of the statute of limitations otherwise applicable.

Hurley v. So. Calif. Edison Co.,
183 F. (2d) 125, 132;

Lanning v. Brown,
(Ohio), 95 N.E. 921;

Urban v. Grimes,
2 Grant Cas. (Pa.) 96;

Drake v. Ramsay,
5 Ohio 252;

O'Donohue v. Smith,
114 N.Y. Supp. 536;

Sternlieb v. Normandie,
(N.Y.), 188 N.E. 726;

Chicago Telephone Co. v. Schultz,
121 Ill. App. 573;

Blake v. Hollingsworth,
76 S.E. 814;

Putall v. Walker,
55 So. 844;

Mourant v. Pullman T. & S. Bank,
(Ill.), 41 N.E. (2d) 1007;

Wright v. Buchanan,
(Ill.), 123 N.E. 53.

Respectfully submitted,

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 4, 1951. [95]

[Title of District Court and Cause.]

ORDER AMENDING FINDINGS OF FACT
AND DENYING DEFENDANT'S MOTION
FOR A NEW TRIAL

This cause having come before the court for hearing on defendant's motion for a new trial filed May 4, 1951, and the motion having been submitted for decision upon the briefs of the parties; and it appearing to the court that due to clerical mistake [Fed. R. Civ. P. 60(a)] paragraph XXVII of the findings of fact [p. 21, line 20] refers to paragraph "X" and "XX" of the findings of fact, whereas the correct reference should be to paragraphs "XII" and "XX";

It Is Now Ordered that paragraph XXVII of the findings of fact be amended [Fed. R. Civ. P. 59(a)] by striking therefrom the Roman numeral "X" appearing in line 20 on page 21, and by inserting in lieu thereof the Roman numeral "XII."

It Is Further Ordered that defendant's motion for [97] a new trial be and is hereby denied.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on the attorneys appearing in this cause.

July 9, 1951.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed July 10, 1951. [98]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF
APPEALS UNDER RULE 73(B)

Notice Is Hereby Given that Southern California Edison Company, Limited, a corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 27, 1951, denial of said defendant's Motion for New Trial in said action having been entered on July 10, 1951.

Dated this 31st day of July, 1951.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant.

[Endorsed]: Filed August 7, 1951. [99]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH DE-
FENDANT AND APPELLANT INTENDS
TO RELY ON APPEAL

On appeal from the judgment herein entered pursuant to Findings of Fact and Conclusions of Law filed herein on April 27, 1951, defendant and appellant intends to rely upon the following points:

A. The evidence shows, without conflict, that the following Findings of Fact are not supported by the evidence:

1. Said evidence shows that William Price and Elizabeth Price, prior to November 19, 1928, owned, as joint tenants, 575 shares of common stock, and that Elizabeth J. Price owned 191 shares of Series B, 6%, preferred stock, and 88 shares of common stock of defendant Company. Finding II, that prior to said date, William Price was the sole owner of any of this stock, is not supported by the [100] evidence.

2. The evidence shows that both William Price and Elizabeth J. Price were donors, and that the gift was made subject to the express provision that Elizabeth J. Price was to receive and use the dividends until defendant received orders to the contrary. The Findings III and IV that William Price, alone, made the gift referred to, and that it was unqualified, and that said Price merely expected to arrange for all dividends to be paid to and retained and used by Elizabeth J. Price, is contrary to the evidence.

3. The evidence shows that the dividend orders were fully made out when signed by plaintiff, and that on their face they disclosed to him their purpose and the use to which they were to be put. The evidence does not support the Finding (V) that plaintiff was requested to sign the dividend orders in blank or that he did not know or understand the purpose for which his signatures were requested, or the use intended to be made of the documents he then signed.

4. The evidence does show that defendant knew, or had reason to know, that Elizabeth J. Price, alone, would benefit from such payments, and that she would not account to, or pay, or otherwise distribute to George E. Burton, or plaintiff, any part of such payments—there being no evidence whatsoever to show that defendant knew, or had reason to know, or how Elizabeth J. Price was, in fact, using payments made to her. The Findings in paragraph XII to the contrary effect, are not supported by the evidence.

5. The evidence shows that plaintiff had abundant opportunity to know, and every reason to know, of his ownership of an interest in stock of defendant Company, and of the nature and purpose and effect and use to be made of the dividend orders signed by him, and of the existence of the assignments made by him of his interest in 575 shares of common stock and of the [101] facts set forth in paragraphs III, VI, IX, X, XI and XII many years prior to March 18, 1944. The Findings of Fact to the contrary (XIII) are not supported by the evidence. Additional Findings of Fact in paragraph XIII of the Findings to the effect that he signed blank dividend orders without knowledge or understanding as to the purpose or effect of his signature, are likewise not supported by the evidence.

6. The evidence does not show any disaffirmance by plaintiff of the dividend orders. Finding to the contrary (XIV) is not supported by the evidence.

7. The evidence shows that plaintiff authorized and consented to the payment of dividends to Elizabeth J. Price and after the assignment by him of the 575 shares was not, as against this defendant, an owner of any interest therein or entitled to receive any part of the dividends and stock rights paid and delivered to Elizabeth J. Price. The Findings to the contrary (XVII) are not supported by the evidence.

8. The evidence does not show defendant knew, or had reason to know, that Elizabeth J. Price, alone, would benefit from such payments and performance, and would not account to or pay, or otherwise distribute to either George E. Burton or plaintiff, any part thereof. The Findings to the contrary (XX) are not supported by the evidence.

9. The evidence shows that plaintiff had notice of and knowledge of, and authorized and consented to the payment and delivery by defendant to Elizabeth J. Price of the dividends and stock rights referred to in paragraph XIX of the Findings, and that he was not entitled to receive any part thereof until he gave notice to defendant of his desire to receive one-third of such payments. The Findings to the contrary (XXII) are not supported by the evidence.

10. The evidence shows that plaintiff knew, and had [102] every reason to know, of his interest in 191 shares, Series B, 6% preferred and 88 shares of common stock of defendant Company and of the nature and purpose and effect and use to be made

of fully made out dividend orders signed by him. The Findings to the contrary (XXIII) are not supported by the evidence.

11. The evidence does not show any disaffirmance by plaintiff of the dividend order referred to in paragraph XXIV of the Findings and the Findings to that effect in said paragraph are not supported by the evidence.

12. The evidence shows that plaintiff knew, and had reason to know, of the execution of said dividend orders by him, the nature of such documents, and the purpose for which they were to be used from the time he signed the same, and that any disaffirmance thereof by him was therefore not made within a reasonable time after reaching his majority. The Findings to the contrary (XXIV) are not supported by the evidence.

13. The evidence shows that defendant had reason to believe that payment of dividends and stock rights to Elizabeth J. Price were so made by it knowing, and having reason to know, that such payments were being made in accordance with the express terms of conditions attached by the donors of such stock to the three joint tenant donees, and according to the written directions of said three donees.

14. That any express or implied Finding, paragraph XXVII, that defendant knew, or had reason to know, of any fraud being practiced upon plaintiff for any reason whatsoever, is not supported by the evidence.

15. There is no evidence that any fraud was ever practiced upon plaintiff by either Elizabeth J. Price or George E. Burton, the evidence showing only that plaintiff was not informed by the donors of the nature of the gift made by them to him, or that if informed thereof, at the time of the trial [103] he had forgotten that he had been so informed. Any express or implied Finding of Fact to the contrary in paragraph XXVII, or in any other paragraph of said Findings, are not supported by the evidence.

B. The Findings of Fact do not support the Conclusions of Law nor the judgment herein, and the Court made errors of law in not holding that:

1. The execution of the dividend orders and the assignment forms covering the 575 shares of common were not subject as against this defendant to disaffirmance within a reasonable time after reaching his majority.

2. Plaintiff did not, as a matter of law, make any disaffirmance within a reasonable time after reaching majority of either his execution of the dividend orders, or of the assignment forms covering the 575 shares of common stock.

3. Insofar as plaintiff continued to be an owner, as joint tenant, of the stock referred to in the complaint herein, Section 1475, Civil Code of the State of California, protects the defendant in the payments it made to Elizabeth J. Price, one of the joint tenants, or such dividends and stock rights

for the reason that (1) no fraud was practiced upon plaintiff, (2) if any such fraud was practiced upon plaintiff, defendant did not know, or have any reason to know, of such fraud, and had every reason to know that the plaintiff had consented to the making of such payments to his co-joint-tenant.

4. The evidence showing that the gift to the three joint tenants was made subject to the condition, at the time the gift was made, that [104] payments of dividends and stock rights on all of said stock should be made to Elizabeth J. Price until defendant received orders to the contrary from one or all of the joint tenants. It follows, as a matter of law, that such condition operated as a matter of law, as a limitation upon the extent of the gift and that Elizabeth J. Price had the legal right as against this defendant to receive payment of all such dividend and stock rights until defendant was informed by one or all of the joint tenants that it should no longer make all such payments to Elizabeth J. Price.

It follows that defendant was entitled to judgment.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 17, 1951. [105]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

You will please prepare a transcript on appeal herein, including the following, to wit: Pleadings, pre-trial stipulation dated June 11, 1946; the findings of fact and conclusions of law together with the direction for entry of judgment thereon; the judgment, motion for new trial with date of filing, order denying motion for new trial with date of entry thereof; the notice of appeal with date of filing, the designations or stipulations of the parties as to matter to be included in the record; a reporter's transcript of the testimony of (1) Plaintiff Lester W. Hurley, (2) of George E. Burton, (3) of R. N. Jones, all on November 13, 1946, and (4) of Frank L. Greenhouse on November 3, 1948; exhibits offered in evidence by the parties hereto, defendant's memorandum of points and authorities pursuant to pre-trial order, stipulation re retrial filed March 16, 1951, and statement by the appellant of the points on which he intends to rely on [107] appeal.

Counsel for defendant and appellant suggests and requests, subject to approval of Court, that in the preparation of the Transcript of Record, in lieu of reprinting in full copies of the various documents hereafter specified, said documents be included therein by reference to "Transcript of Record" on

a former appeal in this same action, being No. 12278 in the records of the United States Court of Appeals for the Ninth Circuit. The documents referred to, and where found in said Transcript, are as follows:

	Pages
Complaint for Accounting	2-19
Answer of Defendant	19-22
Pre-trial Stipulation	23-31
Supplement to Answer of Defendant.....	31-33
Exhibits A, B, C and D as attached to Findings of Fact and Conclusions of Law dated April 26, 1949, these exhibits being likewise attached to Findings of Fact and Conclusions of Law on which judgment herein appealed from is based.....	64-93

Dated August 16, 1951.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant and
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 17, 1951. [108]

[Title of District Court and Cause.]

STIPULATION RE DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

It Is Hereby Stipulated by and between the plaintiff and appellee and defendant and appellant through their respective attorneys of record, the undersigned, that the Clerk of the about-entitled Court, in preparing record of appeal herein, shall, insofar as the exhibits offered in evidence by the parties hereto in the trial of the above-entitled action, include in the record on appeal only the following exhibits:

1. Plaintiff's Exhibits Nos. 1 to 7, inclusive, covering 575 shares of common stock with stock assignment forms attached with all notations appearing on the front and back of said assignments and powers of attorney.
2. Plaintiff's Exhibits Nos. 8 to 13, inclusive.
3. Plaintiff's Exhibit No. 14, which exhibit is attached to and made a part of Findings of Fact and Conclusions of Law and designated therein as Exhibits A, B, C and D. [115]
4. Plaintiff's Exhibit No. 15.
5. Plaintiff's Exhibits Nos. 16 to 19, inclusive.
6. Plaintiff's Exhibit No. 20.
7. Plaintiff's Exhibits Nos. 22 and 23.
8. Plaintiff's Exhibits Nos. 25 to 31, inclusive.

9. Defendant's Exhibits A and C.
10. Defendant's Exhibit T.

Dated this 15th day of October, 1951.

THURMAN L. McCORMICK,
and
HAROLD EASTON,
By /s/ HAROLD EASTON,
Attorneys for Plaintiff and
Appellee.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Defendant and
Appellant.

[Endorsed]: Filed October 18, 1951. [116]

In the United States District Court, Southern
District of California, Central Division

No. 5187-WM—Civil

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-
PANY, LTD., a Corporation,

Defendant.

Honorable William C. Mathes, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Tuesday, November 12, 1946

Appearances:

For the Plaintiff:

FRANK M. GUNTER, ESQ., and
THURMAN L. McCORMICK, ESQ.

For the Defendant:

FULCHER & WYNN, by
CHAS. E. R. FULCHER, ESQ., and
CAROL G. WYNN, ESQ.

LESTER W. HURLEY

the plaintiff herein, called as a witness in his own behalf, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Lester W. Hurley.

Direct Examination

By Mr. McCormick:

Q. Where do you live, Mr. Hurley?

A. 1409 West 27th Terrace, Independence, Missouri.

Q. What is your business at the present time?

A. I am operator of a Missouri Pacific Hotel and Restaurant in Kansas City.

Q. What was your business prior to engaging in the hotel and restaurant business?

A. I was employed by the Missouri Pacific Railroad in a clerical capacity.

Q. When did you go to work for the Missouri Pacific Railroad Company?

A. August the 4th, 1924.

Q. Did you continue to work for the Missouri Pacific Railroad Company then up until the year 1945?

A. I did; yes, sir.

Q. Were you living in Kansas City, Missouri, in the year [3*] 1928?

A. I was; yes, sir.

Q. With whom were you living at that time?

A. I was living with my father and my step-mother.

Q. Had your mother died prior to that?

(Testimony of Lester W. Hurley.)

A. She had; yes, sir.

Q. And what was your age at the time of her death?

A. What date was that?

Q. What was your age at the time of your mother's death?

A. 15 years old.

Q. Was it about that occasion when you first obtained your employment with the Missouri Pacific Railroad Company?

A. That is correct; yes, sir.

Q. State what relation you are to Elizabeth J. Price.

A. She is my grandmother.

Q. And what relation are you to George Burton?

A. He is my uncle.

Q. What was the name of your grandmother prior to her marriage to William Price?

A. Her name was Burton.

The Court: Is that your maternal grandmother?

The Witness: Yes, it is, your Honor.

The Court: How many children did your maternal grandmother have?

The Witness: Two, your Honor. [4]

The Court: Who were they?

The Witness: My uncle and my mother.

The Court: That is, George Burton and your mother?

The Witness: Yes, sir.

The Court: How many children did your mother have?

The Witness: One.

The Court: You were the only child?

The Witness: Yes, your Honor.

(Testimony of Lester W. Hurley.)

Q. (By Mr. McCormick): When were you born, Mr. Hurley. A. December 18th, 1908.

Q. Did your grandmother, Elizabeth Price, ever live at any time in Excelsior Springs, Missouri?

A. She did; yes, sir.

Q. During what period of time was she residing in Excelsior Springs?

A. About 1915, '16, around in there.

Q. Did William Price at any time live in Excelsior Springs? A. He did; yes, sir.

Q. Was your grandmother at any time employed by William Price? A. She was.

Q. And in what capacity?

A. As housekeeper.

Q. After having been employed by William Price for a [5] period of time as a housekeeper, were Elizabeth Price and William J. Price married?

A. They were; yes, sir.

Q. And about what year was that?

A. That was about 1917, 1916 or '17, around there.

Q. And after their marriage did they continue to live in Excelsior Springs? A. No, sir.

Q. Did they then move to Los Angeles?

A. They moved to Los Angeles.

Q. Do you know about what year that they removed to Los Angeles? A. About 1917.

Q. Now, Mr. Hurley, during the time that they lived in Los Angeles did you ever visit your grandmother and her husband in Los Angeles?

A. I did.

(Testimony of Lester W. Hurley.)

Q. And over what period of time or how frequently?

A. My mother and I made three trips to California, in 1920, '21 and '22.

Q. And did you get quite well acquainted at that time with William Price? A. I did; yes, sir.

Q. Did William Price have any children to your knowledge?

A. None that I know of; no, sir. [6]

Mr. McCormick: These have been previously marked and I would like to have the order of marking them, if I may, as Plaintiff's Exhibit 1 there, Plaintiff's Exhibit 2, and so on in order.

The Court: At this time we will take the morning recess of five minutes.

(Short recess.)

Mr. McCormick: I now offer to the court for the purpose of identification certain stock certificates.

The Court: Just hand them to the clerk and they will be marked.

The Clerk: I have marked for identification as Plaintiff's Exhibit No. 1, Certificate No. A8756 for 100 shares of common stock, Southern California Edison Co.; No. 2 for identification, 100 shares of common stock, Southern California Edison Co., Certificate No. A8755; No. 3 for identification, certificate for 100 shares of Southern California Edison Co. common stock, Certificate No. A8754.

The Court: Those are all preceded by "A," are they?

(Testimony of Lester W. Hurley.)

The Witness: Yes, your Honor.

The Clerk: Plaintiff's Exhibit 4 for identification, 100 shares of common stock, Certificate No. A8753; Plaintiff's Exhibit 5 for identification, Certificate for 100 shares of Southern California Edison Co. common stock, Certificate No. A8752; as Plaintiff's Exhibit for [7] identification, Certificate for 67 shares of Southern California Edison Co. common stock, Certificate No. AO-59635; and Plaintiff's Exhibit 7 for identification, certificate for eight shares of Southern California Edison common stock, Certificate No. AO-59630.

Q. (By Mr. McCormick): Now, Mr. Hurley, I present to you for the purpose of examination Plaintiff's Exhibits 1 to 7, inclusive, and will ask you to take a look at the assignment that is attached to the back of each of these certificates and tell the court whether or not the purported signature that appears upon that instrument is your signature.

A. No, sir.

Q. Now having examined each of the assignments and power of attorney, you say that no one of these certificates bears your signature?

A. That is correct, sir.

Mr. McCormick: I offer into evidence Plaintiff's Exhibits 1 to 7, inclusive.

The Court: Is there objection?

Mr. Wynn: No objection.

The Court: Plaintiff's Exhibits 1 to 7, inclusive, for identification are received into evidence. According to my notes they aggregate only 565 shares.

COMMON STOCKS

5 shares
1000

SHARES, \$25 EACH

SOUTHERN CALIFORNIA EDISON COMPANY.

INCORPORATED UNDER THE LAWS OF THE STATE OF CALIFORNIA

THIS CERTIFICATE IS TRANSFERABLE EITHER IN NEW YORK OR LOS ANGELES

This is to certify that **AS JOINT TARGETS WITH ALL HARDS OF SUBSISTENCE**

as the owner of

of twenty five dollars each of the

COMMON CAPITAL STOCK

STOCK



NOV 20 1978
LOS ANGELES - (RMS) NATIONAL TRUST & SAVING BANK
(LOS ANGELES)

We "add the seal of 'Houston's California Wine Company and the signature of'

72 Vices

SECRETARY.

VICE PRESIDENT:

its authorized officers the

VICE PRES.

SOUTHERN CALIFORNIA EDISON COMPANY,
(LOS ANGELES) **TRANSFER AGENT.**

14 *W. A. C. C. C.*

[illegible][illegible]

For Value received, hereby sell, assign and transfer unto

_____ Shares
of the Capital Stock represented by the within Certificate, and do
hereby irrevocably constitute and appoint

_____ Attorney
to transfer the said stock in the books of the within named Company
with full power of substitution in the premises.

Dated, _____ 19__

In Presence of _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE
OF THE CERTIFICATE. IN EVERY PART THEREWITH WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

FORM A.
For value received
assign and transfer to

J. Brice and George E. Ruston
AS JOINT TENANTS WITH FULL RIGHTS OF SURVIVORSHIP
by the Parties to be assigned.

Dated _____

Witness _____

FEB 19 1929

Amesbury



2

W

Assignment of Stock and Irrevocable Power of Attorney

1934

For value received Elizabeth J. Price hereby sell, assign and transfer unto
MRS. ELIZABETH J. PRICE AND GEORGE E. BURTON, AS JOINT TENANTS, WITH FULL RIGHTS

OF SURVIVORSHIP.

ONE HUNDRED (100) _____ shares
of the COMMON Capital Stock of THE SOUTHERN CALIFORNIA EDISON COMPANY

standing in my name on the books of said _____, and do hereby
irrevocably constitute and appoint _____

_____, Attorney, to transfer the said
stock on the books of the said Company, with full power of substitution in the premises.

DATED _____, 19____

IN PRESENCE OF

Elizabeth J. Price X
George E. Burton X
Elizabeth J. Price X
George E. Burton X

Signatures of Elizabeth J. Price and George E. Burton
guaranteed. _____
by _____ Cashier.

The Brotherhood State Bank
Admitted November 12, 1946.

(Testimony of Lester W. Hurley.)

Mr. McCormick: That is an error in the designation of the number of shares. [8]

The Court: Five of them for 100 shares each; those are Exhibits 1 to 5, inclusive; and, according to my notes, as I understood, Exhibit 6 is for 57 shares or 67 shares?

Mr. McCormick: 67 shares.

The Clerk: Yes. I misread the certificate, your Honor. It is for 67 shares.

The Court: 67. Then Exhibit 7 is for eight shares, which would be a total of 575 shares of common.

Mr. McCormick: That is correct, your Honor.

Q. With reference to these certificates designated Exhibits 1 to 7, I will ask you to state, Mr. Hurley, when you first learned of the existence of these shares of stock?

A. March the 18th, 1924.

Q. From whom did you secure that information?

A. I secured it from you.

Q. At the time that you secured that information did you examine the stock report furnished by the California Edison Co.?

A. I did; yes, sir.

Mr. McCormick: I offer to the clerk for purpose of identification a stock record dated March 14, 1944, and bearing the name of O. V. Showers.

The Court: It consists of three pages?

Mr. McCormick: Three pages, your Honor.

The Clerk: 8 for identification. [9]

Q. (By Mr. McCormick): I call your attention

(Testimony of Lester W. Hurley.)

to Plaintiff's Exhibit 8, Mr. Hurley, and ask you to state if that is the stock record which you received and examined on March 18, 1944?

A. Yes, sir; that is correct.

Q. And it was from that record that you secured the information as to the fact that these 575 shares of stock had been placed in your name and thereafter transferred out of your name?

A. That is correct; yes, sir.

Mr. McCormick: I would also like to add to my offer with respect to Exhibits 1 to 7 that I am offering the notations that appear upon the back of this instrument, as well as the face of the assignment and power of attorney.

The Court: I assume from the fact that your offer was unrestricted, that it covers the entire document in all particulars.

Mr. McCormick: That was the intention, your Honor.

Q. Now, Mr. Hurley, after you secured this information with respect to the issuance of this stock what did you then do, if anything?

A. I notified the Southern California Edison by wire to make no further transfer of the stock.

Q. And after having so notified them by wire, did you follow that notification up with a formal written verified [10] notice of the fact that this stock had been transferred out of your name in fraud of your rights? A. I did; yes, sir.

Mr. McCormick: I offer to the clerk for the

(Testimony of Lester W. Hurley.)

purpose of identification a notice bearing date of March 20th, 1944.

The Clerk: 9 for identification.

Q. (By Mr. McCormick): I call your attention, Mr. Hurley, to Plaintiff's Exhibit 9 and ask you to state if that is the notice that was sent to the Southern California Edison Co. on the 20th day of March, 1944?

A. Yes, sir; that is right.

Mr. McCormick: I offer into evidence Plaintiff's Exhibit No. 9.

The Court: I take it that is a copy?

Mr. McCormick: It is a copy, your Honor, yes.

The Court: Is there objection?

Mr. Wynn: No objection.

The Court: Plaintiff's Exhibit 9 for identification is received into evidence.

PLAINTIFF'S EXHIBIT No. 9

Notice

Notice Is Hereby Given to the Southern California Edison Co. Ltd. and all officers, transfer agents and servants, that certificates No. AO 59630; AO 59635 and A 8752 to 8756, inclusive, issued under date of November 20th, 1928, to Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants, and thereafter cancelled under date of February 19, 1929, were illegally, unlawfully, and fraudulently cancelled without the knowledge, consent or authorization of Lester Hurley, and

(Testimony of Lester W. Hurley.)

without the true and legal endorsement of Lester Hurley on said certificates.

You and each of you are further notified that certificates No. AO 61852 and A 9230 to A 9234, inclusive, issued to Elizabeth J. Price and George E. Burton under date of February 19, 1929, in the place and stead of the certificates first above described, were illegally and unlawfully issued without the surrender of the original certificates properly endorsed, and therefore constitute a fraud upon Lester Hurley and his true and lawful ownership in the 575 shares of common stock represented thereby.

You and each of you are further notified and requested to make no further transfers of the certificates last above described until the legal right and ownership of the undersigned stockholder in said certificates has been adjudged and determined.

Signed and dated at Kansas City, Missouri,
March 20th, 1944.

.....

State of Missouri,
County of Jackson—ss.

On this 20th day of March, 1944, before me, N. R. Fischer, a Notary Public, personally appeared Lester Hurley to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(Testimony of Lester W. Hurley.)

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in Kansas City, Missouri, the day and year last above written.

.....,

Notary Public.

Admitted November 12, 1946.

The Clerk: So marked.

Mr. McCormick: I also desire at this time to offer into evidence Plaintiff's Exhibit 8.

Mr. Wynn: No objection.

The Clerk: So marked.

The Court: Plaintiff's Exhibit 8 for identification is [11] received into evidence.

PLAINTIFF'S EXHIBIT No. 8

Common Stock account of: Mrs. Elizabeth J. Price and George E. Burton as Joint Tenants.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
AO 61852	75	2/19/29		Transferred from Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley, J. T. Certificates AO 59630 for 8 shares and AO 59635 for 67 shares.
A9230	100	2/19/29		Transferred from Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley, J. T. Certificates, A8752, 3, 4, 5 and 6, for 100 shares each.
A9231	100	2/19/29		Transferred from William Price and Mrs. Elizabeth Price, J. T. See certificate AO 59631 for 48 shares.
A9232	100	2/19/29		
A9233	100	2/19/29		
A9234	100	2/19/29		
AO 62247	48	3/ 5/29		

Total 623 shares (still outstanding)

Common Stock account of: Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley, Joint Tenants.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
AO 59630	8	11/20/28	2/19/29	Transferred to Mrs. Elizabeth J. Price and George E. Burton as Joint Tenants. See certificate AO 61852 for 75 shares. These certificates were endorsed by all three tenants and signatures guaranteed by Cashier of the Brotherhood State Bank.
AO 59635	67	11/20/28	2/19/29	Transferred to Mrs. Elizabeth J. Price and George E. Burton as Joint Tenants. See certificates A9230, 1, 2, 3 and 4 for 100 shares each. These certificates endorsed by all three with all signatures guaranteed by Cashier of the Brotherhood State Bank.
A8752	100	11/20/28	2/19/29	
A8753	100	11/20/28	2/19/29	
A8754	100	11/20/28	2/19/29	
A8755	100	11/20/28	2/19/29	
A8756	100	11/20/28	2/19/29	

Common Stock account of: William Price and Mrs. Elizabeth J. Price as Joint Tenants.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
AO 59631	48	11/20/28	3/ 5/29	Transferred to Mrs. Elizabeth J. Price and George E. Burton as Joint Tenants. See certificate number AO 62247. Certificate was endorsed by Mrs. Elizabeth J. Price. (William Price was deceased.)

Note: Our records indicate that Mrs. Elizabeth J. Price presented the stock in person to our Transfer Dept. for transfer.

Common Stock account of: Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as Joint Tenants.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
AO 59759	44	11/26/28		Transferred from Elizabeth Jane Price. See certificate LO 63631 for 11 shares \$100 Par.
AO 59770	44	11/26/28		Transferred from certificate AO 56349 for 40 shares in name of Mrs. Elizabeth J. Price and certificate AO 48754 for 4 shares in name of Elizabeth Jane Price.

Total 88 shares (still outstanding)

Common Stock account of: Elizabeth Jane Price.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
LO 63631	11	10/28/24	11/26/28	This certificate for \$100 par value, equivalent to 44 shares of our \$25 Par stock. Transferred to Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as joint tenants. See certificate AO 59759. Certificate was endorsed by Elizabeth Jane Price.
AO 56349	40	7/ 7/28	11/26/28	Issued "Mrs. Elizabeth J. Price"—\$25 Par. Transferred to Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as joint tenants. See certificate AO 59770. Certificate endorsed by Elizabeth Jane Price.
AO 48754	4	5/18/28	11/26/28	\$25 Par. Transferred to Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as joint tenants. See Certificate AO 59770. Certificate endorsed by Elizabeth Jane Price.

Note: Our records indicate that Mrs. Elizabeth J. Price presented the stock in person to our Transfer Dept. for transfer.

6% Preferred Account of: Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as Joint Tenants.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
A10216	100	11/26/28		Transferred from Elizabeth Jane Price. See Certificates AO 81326, AO 83832 and AO 84607.
AO 86998	11	11/26/28		Transferred from Elizabeth Jane Price. See certificates LO 19406 and LO 19407 for 10 shares each of \$100 Par Value stock.
AO 87011	80			

Total 191 shares (still outstanding)

6% Preferred Account of: Elizabeth Jane Price.

Certificate No.	No. Shares	Date Issued	Date Cancelled	Remarks
AO 81326	41	5/19/28	11/26/28	Transferred to Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley as Joint Tenants (\$25.00 Par Value). See Certificates A10216 and AO 86998. Certificates endorsed by Elizabeth Jane Price.
AO 83832	33	7/24/28	11/26/28	Both certificates (\$100 Par Value) equivalent to 80 shares. Transferred to Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley. See certificate AO 87011. Certificates endorsed by Elizabeth Jane Price.
AO 84607	37	8/18/28	11/26/28	
LO 19406	10	2/12/26	11/26/28	
LO 19407	10	2/12/26	11/26/28	

Note: Our records indicate that Mrs. Elizabeth J. Price presented the stock in person to our Transfer Dept. for transfer.

O. V. Showers/K
March 14, 1944.

Admitted November 12, 1946.

(Testimony of Lester W. Hurley.)

Q. (By Mr. McCormick): Now, Mr. Hurley, when did your grandmother die, Mrs. Price?

A. December the 27th, 1943.

Q. And during the lifetime of your grandmother, in conversations had with her, did she ever at any time tell you anything with respect to her property or holdings?

Mr. Wynn: Just a moment. We object to that as hearsay as against this defendant, statements made out of our presence.

The Court: Is that offered to prove the truth of what she said, or merely to prove what she said?

Mr. McCormick: Just merely to prove that the statement was made.

The Court: A verbal fact?

Mr. McCormick: That is right.

The Court: Objection overruled. For that purpose the statement will be admitted.

The Witness: I did not quite get the question.

Mr. McCormick: As to whether she had at any time in conversation with you made any statement to you relative to any property or interest that she held.

A. She said she had an interest in the Southern California Edison Company; yes, sir.

Q. Did your grandmother at any time ever make a statement to you that you had interests in the Southern California Edison [12] Company?

A. No, sir; she never did.

Q. Was there any other statement made by your grandmother at any time relative to whether or not

(Testimony of Lester W. Hurley.)

you would or might at any time benefit from any property or interest that she might have?

A. She said that I might benefit from some of her property at the time of her death, depending on how she felt toward me at that time.

Q. What, if any, statement did she make at that time or at any other time relative to any action on your part in the matter of running her business affairs or inquiring into her activities and business interests?

A. She informed me that, inasmuch as she had in mind benefiting me at the time of her death, gave me no right to pry into her business affairs or run her business.

Q. And she wanted no privilege of that kind to be asserted or undertaken by you?

A. That is correct; yes, sir.

Q. Did you at any time during the lifetime of your grandmother make any effort at all to ascertain what property she had or what interests that she might have in the Southern California Edison Company or any other company? A. No, sir.

Q. Did your grandmother ever at any time ask you to [13] assign or transfer to her or to Mr. Burton any shares of stock in the Southern California Edison Company?

A. No, sir; she did not.

Q. Did your Uncle George Burton ever at any time ask you to assign or to transfer any interest in the stock that you might have in the Southern California Edison Company? A. No, sir.

(Testimony of Lester W. Hurley.)

Q. Did you ever discuss with Mr. Burton or Mr. Price any matter pertaining to stock in the Southern California Edison Company?

A. Not prior to 1944.

Q. That was during the lifetime of your grandmother. But at any time, your answer is not until subsequent to your grandmother's death?

A. That is correct; yes, sir.

Q. Now, you say, I believe, that your grandmother died on December 27, '43?

A. That is correct.

Q. Following the death of your grandmother did you make any inquiry of Mr. Burton as to whether or not there had been any property left by your grandmother? A. I did.

Q. And what, if anything, did Mr. Burton tell you at that time?

A. He told me there was 191 shares of preferred and [14] 88 shares of common stock standing in his and my name.

Q. Did he make any statement at that time relative to the question of whether or not your grandmother left a will? A. He did; yes, sir.

Q. Did you as a result of the fact that she had left a will make any effort to ascertain the terms and conditions of that will?

A. I did; yes, sir.

Q. And what action did you take in that regard? A. I consulted you.

Q. After having consulted me with respect to

(Testimony of Lester W. Hurley.)

the matter of the will, was it your instruction and request that I examine the will?

A. Yes, sir; that is correct.

Q. Was that done on one occasion in your presence? A. Yes, sir; it was.

Q. Do you recall whether or not upon the examination of that will—and did you examine an inventory that was filed at that time in conjunction with the will? A. I did; yes, sir.

Q. Do you recall any information or statements having been given you by your attorney at that time that there seemed to be a conflict or a good deal of uncertainty as between the terms of the will and the inventory?

A. Yes, sir; that is correct. [15]

Q. As a result of that information what, if anything, did you instruct or direct your attorney to do?

A. I instructed you to secure the information from the Southern California Edison Company.

Q. As a result of those instructions it was then that this report was subsequently secured from the Southern California Edison Company?

A. That is correct; yes, sir.

Q. Exhibit No. 8? A. That is correct.

Q. Mr. Hurley, I want you to tell the court whether or not prior to March 18, 1944, that you ever learned from any source or from any individual anything with respect to the existence of these 575 shares of stock in the Southern California Edison Company?

(Testimony of Lester W. Hurley.)

A. No, sir; I never learned a thing about it.

Q. Prior to the death of your grandmother in December, 1943, did you ever secure any dividends from the Southern California Edison Company?

A. No, sir.

Q. Do you now know that dividends were declared by that company and paid during that period of time from 1928 up until 1943?

A. I do now; yes, sir.

Q. Mr. Hurley, are you acquainted with a party by the name of [16] Homer E. Alberti?

A. I am; yes, sir.

Q. Do you know what business or what he was engaged in in the year 1928 or '9?

A. No, I don't, not in 1928 or '29.

Mr. Wynn: Did the reporter get the answer?

The Witness: I said, "No, sir; not in 1928 or '29."

Mr. Gunter: I could not hear it.

Q. (By Mr. McCormick): Did you afterwards learn as to what connection or business he was engaged in during that period?

A. I did; yes, sir.

Q. Was he at that time, as you now know, cashier of the Brotherhood State Bank or an official connected with the Brotherhood State Bank of Kansas City, Kansas?

A. That is correct; yes, sir.

Q. When did you first meet Homer Alberti?

A. In 1933.

(Testimony of Lester W. Hurley.)

Q. Do you have any way in which you can fix or explain as to how you fix that date of having met Mr. Alberti in 1933? A. Yes, sir.

Q. Just state what that is.

A. Well, it was the year I was laid off on the railroad and I had spent considerable time with my grandmother that year. [17] We had lunch there in Kansas City, Kansas, close to the bank, and she took me in the bank and introduced me to him.

Q. Was that the year in which Mrs. Cecilia Burton, the then wife of George Burton, was killed?

A. Yes, sir; that is correct.

Q. Mr. Hurley, in 1929 what was your age?

A. I was 20 years old.

The Court: What is your birth date?

The Witness: December the 18th, 1908.

Mr. McCormick: Is it the position of the defendant to deny that that is the correct age of the plaintiff?

Mr. Wynn: Well, you have showed that. I think we have no contest on that.

Mr. McCormick: Very well, I will avoid introducing these.

The Court: He stated as a matter of family history he was born on December 18, 1908.

Is that what your mother told you?

The Witness: Yes, sir, your Honor; it is.

Q. (By Mr. McCormick): Now, Mr. Hurley, I would like you to state as to what, if any, consideration that you have received from George Burton,

(Testimony of Lester W. Hurley.)

Elizabeth J. Price, or anyone else, or from any source for the alleged or claimed assignment or transfer of these 575 shares of stock.

A. None whatsoever.

Q. Are you acquainted, Mr. Hurley, with Helen Burton? [18] A. I am; yes, sir.

Q. Is she the daughter of George Burton?

A. Yes, sir.

Q. In 1929 what was her age, approximately?

A. I would say she was around 16 years of age.

Mr. McCormick: I offer for the purpose of identification Dividend Order No. 12742, bearing date of November 19, 1928.

The Clerk: 10 for identification.

Q. (By Mr. McCormick): I call your attention, Mr. Hurley, to Plaintiff's Exhibit 10 and to the dividend order on the usual form of the Southern California Edison Company and ask you to take a look at the signatures appearing thereon and tell the court as to whether or not the purported signature "Lester Hurley" appearing thereon is your signature? A. No, sir; it is not.

Q. I will ask you to state whether or not you are acquainted with the signature of George Burton? A. Yes, sir. Fairly well, yes, sir.

Q. State whether or not in your opinion that is his signature? A. Yes, sir.

Q. Are you acquainted with the signature of your grandmother, Elizabeth J. Price?

A. Yes, sir.

(Testimony of Lester W. Hurley.)

Q. Is the signature on that instrument the signature of [19] your grandmother?

A. Yes, sir.

Q. Now, I will ask you to take a look at the writing, the written portion, written in handwriting, in the body of this instrument where the name "Mrs. Elizabeth J. Price" is inserted in longhand, and then below the printing, the names "Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley," and tell, if you feel that you know, in whose handwriting that is?

A. In my grandmother's, Mrs. Elizabeth Price.

Mr. McCormick: I offer into evidence Plaintiff's Exhibit 10.

Mr. Wynn: No objection.

The Court: Plaintiff's Exhibit 10 for identification is received into evidence.

FORM—INV. 21-A REV.

PLAINTIFF'S EXHIBIT NO. 10

KINDLY SIGN AND RETURN AT ONCE

SOUTHERN CALIFORNIA EDISON COMPANY
DIVIDEND ORDERDate Nov 19th 1928Southern California Edison Company,
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to

Mrs Elizabeth J. Price

at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of

Mrs Elizabeth J. Price and George E Burton
and Lester Hurley

on the books of your company.

Stock how held—

Original Preferred Preferred Series A

Common ✓ (575 shares) Preferred Series B

Classified By	<u>MR</u>	Date	<u>12-11</u>
Serial	<u>1</u>	Date	<u>12-11</u>
By	<u>IP</u>	Date	<u>12-11</u>
	<u>12</u>	Date	<u>12-11</u>

X Signature Mrs Elizabeth J Price

Address

X Signature George E BurtonAddress 1046 Ann Ave Kansas City, KansasWitness: X Signature Lester HurleySignature Helen Burton Address 5716 S.W. 4thAddress 1046 Ann Ave KC Kans. Kansas City MoAddress for sending dividends: 1301 West 52nd StLos Angeles

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Admitted November 12, 1946.

DEC 11 1928

(Testimony of Lester W. Hurley.)

Does any of your handwriting appear on Exhibit 10?

The Witness: No, sir.

Q. (By Mr. McCormick): Mr. Hurley, you perhaps noted in examining this instrument that the name of "Helen Burton" purports to be on this instrument as a witness to a signature. Do you know whether or not that is the signature of Helen Burton? A. Yes, sir.

The Court: Is it her signature?

The Witness: Yes, sir; it is her signature. [20]

Q. (By Mr. McCormick): I will ask you to state, and that is the Helen Burton that you were referring to a few moments ago as the daughter of George Burton, about 16 years of age?

A. That is correct; yes, sir.

Q. At this time, 1928? A. Yes, sir.

Q. I will ask you to state, Mr. Hurley, how you spell the name Hurley? A. H-u-r-l-e-y.

Q. In looking at this signature do you observe there is any variation in that spelling?

A. The last name is spelled H-u-r-l-e-e-y.

The Court: Do you or any member of your family ever spell the name in that manner?

The Witness: No, sir, your Honor.

The Court: Were you ever known by the name spelled in that manner?

The Witness: No, sir, your Honor.

Q. (By Mr. McCormick): Mr. Hurley, are you married at the present time?

A. I am; yes, sir.

(Testimony of Lester W. Hurley.)

Q. Have you been at any time previously married? A. Yes, sir; I have.

Mr. McCormick: Your Honor, at this time I would like to [21] request that permission be granted to remove some original exhibits that were attached to a deposition that was taken in this case, for the purpose of enabling us to introduce them in their order, as they constitute signatures which are admitted signatures which we desire to introduce for the purpose of comparison or basis of comparison.

The Court: Does either party expect to offer the depositions?

Mr. McCormick: It would only be, as far as the plaintiff is concerned, a portion of the deposition possibly offered. I would not offer it, except—just a moment.

(Counsel conferring.)

Mr. Wynn: You are speaking of a deposition of Mr. Burton, are you?

Mr. McCormick: Yes, I am.

Mr. Wynn: Mr. Burton is here in court.

Mr. McCormick: No, it will not be offered.

Mr. Wynn: We have no objection.

The Court: Very well, the exhibits may be detached. In using them, Mr. McCormick, so the record will be clear, give the exhibit number as given in the deposition in identifying the document that you withdraw.

(Testimony of Lester W. Hurley.)

Mr. McCormick: Yes, your Honor. The exhibit itself does not appear to be in there.

Mr. Wynn: It must have been opened, if the court please. [22] I assume that they are filed with the clerk.

The Clerk: I have no knowledge of them.

The Court: Do you find them, Mr. McCormick?

Mr. McCormick: I have now, your Honor, thank you. I offer to the clerk a statement dated February 19, 1931, consisting of two pages, which is an instrument bearing the signature of Lester Hurley in two places and verified under date of 19th day of February, 1931.

The Court: You have removed that from a deposition, have you?

Mr. McCormick: And that was removed from the deposition of E. R. Cochran, taken at Kansas City, Kansas, on October 19, 1946, and identified in the taking of said deposition as Plaintiff's Exhibit 1.

The Clerk: It will be 11 for identification here.

Mr. Wynn: May I see that instrument before you question the witness?

Mr. McCormick: Yes, indeed you may.

Q. I call your attention, Mr. Hurley, to Plaintiff's Exhibit 11, and I will ask you to take a look at the signatures of Lester Hurley which purport to appear thereon and state to the court whether that does bear your genuine signature?

A. It does; yes, sir.

(Testimony of Lester W. Hurley.)

Q. Does your signature appear on that instrument in two different places? [23]

A. It does; yes, sir.

Q. That is an instrument which is witnessed by "Helen Burton"? A. Yes, sir; it is.

Q. And "Paul Ditzen"?

A. That is right; yes, sir.

Q. That, again, is the same Helen Burton that you were referring to a few minutes ago?

A. Yes, sir; that is correct.

Mr. McCormick: I offer into evidence as basis of comparison Plaintiff's Exhibit 11, and particularly the signatures of "Lester W. Hurley" appearing thereon.

Mr. Wynn: No objection.

The Court: Plaintiff's Exhibit 11 for identification is received into evidence. What is the date of this document?

-2-

I was informed by you that my seniority would not date from April 1st, 1925 but would date from December 7th, 1926. This is the date I was transferred to Report Clerk and not the date I entered service as a Class One Clerk.

In as much as I complied with the Rules of the Company in protesting the seniority date as shown on the Roster of 1926 I believe I am entitled to consideration and that my seniority dates from April 4th, 1925 at which time I became a Class One Clerk and am respectfully requesting that this be changed. The only place where I erred was that I did not protest all future seniority lists. However my interpretation is that the Rule provides only for protesting of seniority dates within sixty days after the first posting, which was done in this case.

Yours respectfully,

Lester H. Hurley

I, Lester Hurley, appearing before a Notary Public this the 19th day of February, 1931, and being duly sworn do state that the foregoing statement relative to my seniority standing on the Clerks Roster of the Missouri Pacific Railroad at Kansas City, is a true and correct statement.

WITNESS:

Aelen Burton
Paul H. Degen

Lester H. Hurley

State of Missouri *Kansas,*
County of Jackson *Myandotte,* 20

Subscribed and sworn to before me this 19th day of February, 1931 as a true and correct statement.

Paul H. Degen
NOTARY PUBLIC.

My Commission
Expires Nov 6th - 1931

Admitted November 12, 1946.

(Testimony of Lester W. Hurley.)

PLAINTIFF'S EXHIBIT No. 11

Kansas City—Feb. 19, 1931

Mr. R. H. Tait,
Master Mechanic:

Dear Sir:

With reference to my Seniority on Roster of Class One Clerks,—

My service with the Company in clerical positions is as follows:

Employed as Caller—Third Shift. . . . Aug. 4, 1924

Transferred to Caller—First Shift. . . Aug. 18, 1924

Transferred to Clerk & Messenger. . . Apr. 4, 1925

Clerk & Messenger position abolished. Aug. 24, 1925

Transferred to Caller—First Shift . . . Aug. 25, 1925

Transferred to Roundhouse Clerk

(Temporary) Oct. 26, 1926

Transferred to Report Clerk Dec. 7, 1926

When the 1926 Seniority Roster was posted my name did not appear on it. Within the period of sixty days after posting, or about February 27th, 1926, I took the matter up with Mr. A. R. Peterson who was then Shop Grievance man for the Shop and Store Department, for adjustment, advising him my name did not appear on the Seniority list and that I should have been shown as a Class One

(Testimony of Lester W. Hurley.)

Clerk April 4th, 1925. He advised me he would look into the matter and after waiting for some time without any action being taken I again called on him regarding the matter and was advised he would not handle it as I was not a member of the Clerks' Organization but stated he would be glad to handle and adjust the matter if I would join the organization. Under date of October 25th, 1926 I handed him a membership fee of five dollars and hold a receipt showing this was payment for membership in Lodge #284 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. I heard nothing from the application, received no notice as to whether or not I had been accepted and do not know whether or not he made any return to the Brotherhood covering this remittance. Again in December, 1926 I called his attention to this matter but without any results.

My letter to Mr. J. L. Walls, Local Chairman of the Clerks, dated February 4th, 1930, fourth paragraph may be somewhat misleading in as much as I advised I brought this to the attention of Mr. Peterson in December, 1926, at which time he was Local Chairman of the Clerks at the Shop and was advised he could do nothing on account of my not belonging to the Brotherhood, that I immediately paid my assessment into the Brotherhood of Railway Clerks, making application for membership. In as much as I had already made remittance under date of October 25th, 1926 I meant to imply that I again called Mr. Peterson's attention to the fact

(Testimony of Lester W. Hurley.)

that no action had been taken regarding my seniority standing or receipt of membership card.

In as much as I protested this matter personally to Mr. Peterson within the specified limit as provided by Rules governing these matters, I feel I should be placed on the seniority list according to my service as a Class One Clerk, in other words, April 4th, 1925.

Further, on account of not receiving any satisfactory advice, on November 18th, 1930 I took the matter up with Mr. Wills' office direct and requested it be looked into with a view of adjusting the seniority date. Mr. Wills was at that time in possession of transcript record of my service and was no doubt in possession of my entire record as a Clerk. He replied to me under date of December 2nd, his file V-W-60006-5 that the Seniority Roster would be corrected to show my seniority as April 1st, 1925 as a Class one Clerk. However, the PM of January 26th [Balance of copy missing.]

Mr. McCormick: 1931, your Honor.

The Court: It bears date of February 19, 1931. Did you sign it in these two places on or about that date?

The Witness: Yes, sir, your Honor.

The Court: Did Helen Burton witness it on top of there?

The Witness: Yes, sir; that is correct.

Mr. McCormick: I now offer to the court for

(Testimony of Lester W. Hurley.)

the purpose of identification an application for a license to marry, subscribed and sworn to the 16th day of December, 1927.

The Clerk: 12 for identification. [24]

Q. (By Mr. Hurley): I call your attention, Mr. Hurley, to Plaintiff's Exhibit 12 and ask you to state as to whether or not your signature appears on that instrument? A. Yes, sir; it does.

Mr. McCormick: I offer into evidence Plaintiff's Exhibit 12, showing the signature of "L. W. Hurley," for the purpose of basis of comparison.

Mr. Wynn: No objection.

The Clerk: Plaintiff's 12.

The Court: Plaintiff's Exhibit 12 for identification is received into evidence.

Address *Leffles E. 9 PL. F. S. CHI. IT. 12*
5716 Scarritt
 Application No. A *30234* For License to Marry.

STATE OF MISSOURI, } ss.
 County of Jackson,

(AFFIDAVIT OF MALE)

I, *Lester Hm Hurley*
 of *Kb* County of *Jackson*
 and State of *Mo* party of the first part, desiring to procure a license to marry
Florence Marie Marshall *Hog & Bales*
 of *Kb* County of *Jackson*
 and State of *Mo* party of the second part, do hereby solemnly swear that we
Dec 18-1926 are of the ages of *21* years and *20* years respectively and that we are both single and unmarried and
 not first cousins, and may lawfully contract and be joined in MARRIAGE

(SIGN HERE)

Subscribed and sworn to before me this *16* day of *Dec*, 192*7*

JOSEPH W. CORDER, Recorder

By *J. W. Corder*

Deputy.

STATE OF MISSOURI, } ss.
 County of Jackson,

(AFFIDAVIT OF FEMALE)

I, the undersigned, party of the second part, do hereby solemnly swear that I am
 the person named in the above application for a marriage license and that I am the age of *20* years and
 that I am single and unmarried and may lawfully contract and be joined in MARRIAGE

(SIGN HERE)

Subscribed and sworn to before me this *16* day of *Dec*, 192*7*

JOSEPH W. CORDER, Recorder

By *J. W. Corder*

Deputy.

STATE OF MISSOURI, } ss.
 County of Jackson,

I, the undersigned, do hereby solemnly swear that the said party of the second part
 named in the foregoing application for marriage license is personally known to me, and that she is over the age of
 eighteen years and may legally contract said marriage.

(SIGN HERE)

(Address)

Subscribed and sworn to before me this _____ day of _____, 192*7*

JOSEPH W. CORDER, Recorder

By _____

Deputy.

(Consent of Parent or Guardian to the Marriage of a Minor)

STATE OF MISSOURI, } ss.
 County of Jackson,

I, the undersigned, do hereby solemnly swear that I am the _____

of the said party of the _____ part, named in the foregoing application for marriage license, and do
 hereby give my consent to _____ marriage _____

(SIGN HERE)

(Address)

Subscribed and sworn to before me this _____ day of _____, 192*7*

JOSEPH W. CORDER, Recorder

By _____

Deputy.

(Testimony of Lester W. Hurley.)

Q. (By Mr. McCormick): Mr. Hurley, in the matter of your employment with the Missouri Pacific Railroad Company for the years that you testified that you were employed by that company did you have occasion to do considerable writing?

A. Yes, sir.

Q. You were in a clerical department, is that right?

A. That is right; yes, sir.

Q. I will ask you to state, Mr. Hurley, as to whether or not you had in the proceedings which were had relative to the stock here in controversy appeared in court and listened to the testimony of George Burton?

A. I have; yes, sir.

Q. And did you at that occasion recall his having testified with respect to a transaction that was supposed to [25] have occurred relative to the matter of making assignments of 575 shares of stock, made up of seven certificates, at the Brotherhood State Bank in the presence of Mr. Homer E. Alberti? Do you recall his having so testified?

A. Yes, sir.

Q. Upon that occasion it was related that Mr. Homer Alberti, an officer of the bank, was present and that your grandmother, Elizabeth J. Price, George E. Burton and his wife, Cecelia Burton, met you at the bank; do you recall such testimony?

A. Yes, sir.

Q. Now I will ask you to state, Mr. Hurley, whether or not that you ever met your uncle, George Burton, and your grandmother, Elizabeth J. Price, at the Brotherhood State Bank at any

(Testimony of Lester W. Hurley.)

time on any occasion? A. I never did.

Q. Do you know as to what the hours were for banking in Kansas City, Kansas, during the year '29?

A. Well, generally speaking, the banking hours were from 9:00 to 3:00. I think through the years some of them closed earlier than that.

Q. Now, was it a practice for the banks to be closed there on Saturday afternoon?

A. Yes, sir. As far as I know, they all closed.

Q. Mr. Hurley, you know when Mr. William Price was [26] buried? A. Yes, sir.

Q. When was that?

A. January the 19th, 1929.

Q. And he was buried in a cemetery in Kansas City, Missouri?

A. That is correct; yes, sir.

Q. Did you attend the funeral of William Price?

A. I did.

Q. When was the last time that you recall ever having seen William Price during his lifetime?

A. In 1921.

Mr. McCormick: I offer to the clerk for the purpose of identification——

The Witness: May I correct that last statement? It was 1922 was the last time I saw him.

Mr. McCormick: 1922, yes. I offer to the clerk for the purpose of identification Dividend Order No. 12743.

The Clerk: 13 for identification.

Q. (By Mr. McCormick): Mr. Hurley, I call to

(Testimony of Lester W. Hurley.)

your attention Plaintiff's Exhibit 13 and ask you to take a look at the various signatures thereon and state to the court as to whether or not your signature appears upon that document at any place?

A. No, sir; it does not.

Q. I ask you to note the handwriting in that instrument, [27] which bears date of November 22, 1928, where it is written "Mrs. Elizabeth Jane Price" in longhand, and then further down on the instrument, "Mrs. Elizabeth Jane Price and George E. Burton and Lester Hurley," and state whether or not you know the handwriting.

A. Well, I would say the "Mrs. Elizabeth Jane Price" at the top portion of the document is in my grandmother's writing; and it seems that "Mrs. Elizabeth Jane Price" there is in her handwriting.

The Court: Where it next appears?

The Witness: Yes, sir; where it next appears in this line.

Q. (By Mr. McCormick): I will ask you to state whether or not that instrument does bear the signature of Elizabeth J. Price, in your opinion?

A. In my opinion, it does; yes, sir.

Q. And George Burton?

A. Yes, sir; that is his signature.

Q. I will ask you to also note, Mr. Hurley, that there appears to be a signature over here to the side of a party by the name of "R. N. Jones." Do you know or have you ever been acquainted with a party by the name of R. N. Jones?

A. No, sir.

(Testimony of Lester W. Hurley.)

Q. I believe your testimony was that this signature appearing on this instrument is not your signature? [28]

A. That is correct; yes, sir.

Mr. Gunter: Did you ask that question? I did not catch it.

Mr. McCormick: I think I did.

Mr. Gunter: I beg your pardon. I had a mental reservation to call it to your attention.

The Court: Do you offer Exhibit 13 into evidence?

Mr. McCormick: Just a moment, your Honor. Yes, I offer now Exhibit No. 13 into evidence.

Mr. Gunter: No objection.

The Court: Plaintiff's Exhibit 13 for identification is received into evidence.

The Clerk: So marked.

KINDLY SIGN AND RETURN AT ONCE

12743

SOUTHERN CALIFORNIA EDISON COMPANY
DIVIDEND ORDERDate Nov 22nd 1928Southern California Edison Company,
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to

Mrs Elizabeth Jane Price

at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of

Mrs Elizabeth Jane Price and George E. Burton
and Lester Hurley
on the books of your company.

Stock now held—

Original Preferred..... Preferred Series A.....

Common ☒ (88 shares) Preferred Series B ☒ (191 shares)

Classified By	77K	Date	12-11
Screened Out By	015	Date	12/11
Entered in Ledger By		Date	

X Signature Mrs Elizabeth Jane Price
Address 1301 West 52nd St Los AngelesX Signature George E. Burton
Address 1046 Lynn Ave Kansas City MoX Signature Lester Hurley
Address 7716 Searrett Rd Mo

Witness:

Signature A. J. JonesAddress 3539 Garfield Ave

Address for sending dividends:

1301 West 52nd Street
Los Angeles

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Admitted November 12, 1928.

DEC 11 1928

Q. (By Mr. McCormick): Now, Mr. Hurley, following the trial which was had in United States District Court in Kansas, state whether or not there was issued to you by the Southern California Edison Company 50 per cent interest in the 575 shares of stock concerning which we have been introducing this testimony?

A. There was; yes, sir.

Q. State whether or not promptly following the conclusion of those proceedings that you made demand upon the Southern California Edison Company.

Mr. Wynn: I object to that as calling for his conclusion whether it was "promptly" or not. He may testify as to what he did. [29]

Q. (By Mr. McCormick): Well, just state, if you will, as to whether or not——

A. Yes, sir.

Q. ——you did make such a demand.

A. Yes, sir.

Q. I will also ask you to state, if you will, whether or not the Southern California Edison Company has complied with that request and demand to pay you the dividends, your interest or share of the dividends that have accumulated on this stock from 1928.

Mr. Gunter: It is stipulated that they did not, so I do not think that you need go into that.

Mr. McCormick: Very well.

The Court: Was the demand made in writing?

Mr. McCormick: Yes, your Honor; there was a letter in the matter.

(Testimony of Lester W. Hurley.)

Mr. Wynn: It is covered by the pre-trial stipulation.

Mr. McCormick: The stipulation, I believe, covers that matter, as Mr. Gunter has just called my attention to.

Mr. Gunter: The copy of the demand is not in the pre-trial stipulation. If you have it, perhaps, I think that is what the court is referring to.

Mr. McCormick: You have the original, I expect.

Mr. Wynn: What is the date, Mr. McCormick?

Mr. McCormick: October 15, 1945. [30]

Mr. Wynn: No, I do not believe I do.

Mr. Gunter: The substance of it is stipulated to in the pre-trial stipulation.

The Court: Perhaps you might look it up during the noon recess.

Mr. McCormick: Yes. Pardon me for the delay.

The Court: Before we recess, Mr. Wood, did you have a motion to make?

(Interruption for other court proceedings.)

Mr. McCormick: I now offer to the clerk for the purpose of identification a certified copy of Findings of Fact and Conclusions of Law and Judgment in the suit of George E. Burton versus Lester W. Hurley in case No. 4974-Civil in said court.

The Court: Is that offered into evidence?

Mr. McCormick: I offer it for identification, your Honor. Well, I offer it into evidence.

Mr. Wynn: To which we object, if the court please, as not being in any way binding upon this

(Testimony of Lester W. Hurley.)

defendant, an action to which this defendant was not a party.

The Court: Are you offering it for the purpose of binding the defendant here by the findings?

Mr. McCormick: Your Honor, I would like to offer it for all purposes.

The Court: Very well, let it be marked for identification [31] at this time and the court will reserve ruling on it.

The Clerk: 14 for identification.

Mr. McCormick: You may inquire.

Mr. Wynn: If the court please, I would prefer to await the afternoon session to begin cross-examination.

The Court: Is there any objection to resuming at 1:30, gentlemen?

Mr. Wynn: No. I think we can make it.

Mr. McCormick: No, no objections, your Honor.

The Court: Very well, we will recess the trial at this time until 1:30. You may step down. Court will adjourn.

(Whereupon, an adjournment was taken until 1:30 o'clock p.m. of the same day, Tuesday, November 12, 1946.) [32]

Tuesday, November 12, 1946, 1:30 P.M.

Mr. McCormick: I now present to the clerk for purposes of identification a letter addressed to "Southern California Edison Company, Ltd., Edison Building, Los Angeles, California," dated Oc-

tober 15, 1945, together with enclosure contained therein, being an opinion of the United States District Court for the District of Kansas, First Division, in the case of George E. Burton versus Lester Hurley and Southern California Edison Company, Ltd., a corporation, defendants, No. 4974-Civil.

The Clerk: 15 for identification.

The Court: Did you wish those both marked as one exhibit?

Mr. McCormick: They are related. At any rate, the enclosure was made with the letter. If there is no objection.

Mr. Wynn: Well, I think yes, there is an objection as far as the admission of the Opinion of the District Court of Kansas is concerned.

The Court: It is not offered into evidence as yet.

Mr. Wynn: Oh, no, no. As far as identification is concerned, no objection.

The Clerk: It will be 15 for identification.

Mr. Gunter: I am wondering, in view of the fact counsel has indicated he is going to object to part of it, whether it would not serve the court better, for identification, if we mark them separated, and if Mr. McCormick wants to offer [33] them collectively, he refer to them at that time. Whatever the court wishes in that regard.

The Court: Yes, I think well of the suggestion. Let the letter be marked Exhibit 15 for identification and the opinion enclosed or attached thereto be marked Plaintiff's Exhibit 16 for identification.

(Interruption for other court proceedings.)

Mr. McCormick: Mr. Hurley, will you take the stand?

LESTER W. HURLEY

(Recalled)

Direct Examination

(Resumed)

By Mr. McCormick:

Q. I call your attention to Plaintiff's Exhibit 15, being a letter dated October 15, 1945, addressed to "Southern California Edison Company, Ltd., Los Angeles, California," and ask you to state if that is a copy of a letter sent the Edison Company under that date, at your request, on your behalf by your counsel? A. Yes, sir.

Mr. McCormick: I offer into evidence Plaintiff's Exhibit 15.

Mr. Wynn: No objection.

The Court: Plaintiff's Exhibit 15 for identification is received into evidence.

(Testimony of Lester W. Hurley.)

PLAINTIFF'S EXHIBIT No. 15

October 15, 1945.

Southern California Edison Company, Ltd.,

Edison Building,

Los Angeles, California.

Attention: Mr. B. F. Woodward, General
Solicitor.

Re: Hurley Dividends.

Gentlemen:

I am enclosing herewith copy of opinion, findings of fact, conclusions of law and judgment entered in the case of *Burton v. Hurley*, No. 4974-Civil (Kansas).

You will please note that by the opinion of the Court as well as by finding of fact No. 10, the dividend order dated November 19, 1928, which was filed with the California Edison Company on December 11, 1928, is found to be a forgery insofar as it purports to bear the true and genuine signature of Lester Hurley.

You will further note that by conclusion of law No. 4 it is the judgment of the Court that said dividend order dated November 19, 1928, insofar as it purports to be an order of Lester Hurley to pay said dividends to Elizabeth J. Price, is void and of no force and effect.

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 15—(Continued)

It follows from the above that the action of the California Edison Company in paying said dividends as well as the delivery to Elizabeth J. Price of all stock rights that accrued through the years on said stock was illegal and unlawful and constituted a misappropriation of Mr. Hurley's interest therein.

Please understand that I realize full well that no desire existed on the part of the Southern California Edison Company to pay any dividends or deliver any interest to anyone not lawfully entitled thereto. However, the fact remains that as a result and by reason of the forgery perpetrated in this matter the dividends and other interests to which Lester Hurley was legally and lawfully entitled has been diverted and paid to Elizabeth J. Price without any legal and lawful right on the part of the California Edison Company so to do.

In connection with the above, however, I desire to call to your attention the fact that the 575 shares of common stock represented by certificates dated November 20, 1928, and bearing numbers AO59630, AO59635 and A8752 to A8756, inclusive, were purportedly assigned to George E. Burton and Elizabeth J. Price on February 19, 1929, and the signature purporting to be the signature of Lester Hurley by which said assignment was effected was guaranteed by the Brotherhood State Bank of Kansas City, Kansas. It is my thought that in all

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 15—(Continued)

probability no dividends were paid to Elizabeth J. Price or any interest delivered to Elizabeth J. Price connected with said stock between the dates of November 20, 1928, and February 19, 1929, when said purported assignment took place. It follows, therefore, that if such are the facts it is reasonable to assume that the dividends thereafter paid and rights therein granted to Elizabeth J. Price were influenced by the fact that Lester W. Hurley had purportedly parted with his interest by assignment of the stock itself and that his signature effecting said assignment was guaranteed. That the action of the company in paying said dividends through the years following this purported assignment was influenced by and reliance placed upon said purported assignment by Lester Hurley whose signature was guaranteed rather than upon the dividend order purportedly signed by Lester Hurley whose signature thereon was not guaranteed. If this is true then it appears to the undersigned that since said dividends were paid upon the faith and in reliance upon the genuineness of the signature of Lester Hurley which was in fact guaranteed by the Brotherhood State Bank of Kansas City, Kansas, then in event of a loss that accrues to the company by reason of the necessity of paying to Lester W. Hurley the dividends to which he is lawfully entitled immediately creates a definite liability on the part of the Brotherhood State Bank to reimburse

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 15—(Continued)

the company for such loss which was brought about by the guaranty on its part of a spurious or forged signature.

Now I believe that you fully understand that since the signature of Lester Hurley purporting to assign said stock certificates as well as the dividend order has been adjudged by the U. S. District Court for the District of Kansas, which judgment is final, to be a forgery the conclusion is unavoidable that the Brotherhood State Bank is liable to your company for the dividends on these 575 shares which were paid to Elizabeth J. Price in the place and stead of Lester W. Hurley who is lawfully and legally entitled thereto. However, this may be, I desire at this time on behalf of my client Lester W. Hurley to make demand upon the Southern California Edison Company for the payment of all dividends, stock rights and other interests that were due to Lester W. Hurley as the lawful and legal owner as joint tenant with full right of survivorship of the aforesaid 575 shares of common stock in the California Edison Company from November 20, 1928, to and including the 27th day of December, 1943, as well as on stock owned by Lester Hurley in the California Edison between the last above designated dates.

I also desire at this time to ask that you furnish me, at your early convenience, with a statement as reflected by the books of your company showing all

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 15—(Continued)

dividends and stock rights paid and delivered to Elizabeth J. Price on the aforesaid stock as well as other stock standing in the name of Lester W. Hurley from the 20th day of November, 1928, to the date of the death of Elizabeth J. Price, namely December 27, 1943.

Thanking you for your attention to the above matter and for a reply at your early convenience as to the position your company desires to take in this matter, I am

Yours very truly,

THURMAN L. McCORMICK.

TLM/kt

Enc.

Admitted November 12, 1946.

Mr. McCormick: I now at this time, if the court please, offer into evidence Plaintiff's Exhibit 16, constituting an [34] enclosure that was made with Exhibit 15 just offered.

Mr. Wynn: To the admission of which we object upon the grounds, first, that it is an opinion in an action to which the Edison Company was not a party and it is not binding upon the Edison Company; and secondly, that said action has been shown

(Testimony of Lester W. Hurley.)

not to involve directly, by pleadings, the dividend orders which are involved in the present action.

The Court: This is a part of the notice that went to the Edison Company?

Mr. Wynn: Part of the enclosure, yes. But the opinion, as such, is not binding upon the Edison Company, is our contention. That it received it, yes; but admissible in evidence in this action, we contend no.

The Court: As I conceive it, the purpose of plaintiff's offer is to show what was brought home to the defendant, irrespective of the truth of what was said, is that it?

Mr. McCormick: Very true, your Honor. And I may further say that the opinion was enclosed with the letter, as I believe I could establish by letters received, at the request of the Edison Company.

The Court: You are not attempting here by this offer, or at least that is not the purpose of it, to attempt to bind the Edison Company by what the judge in the District of Kansas may have said?

Mr. McCormick: Only insofar as under the decision of this [35] court in its final opinion and conclusion should decide as to whether or not such opinion, as rendered, and judgment and findings of fact and conclusions of law—

The Court: Let us not confuse the findings of facts, conclusions of law, and judgment. I have reserved ruling on that.

Mr. McCormick: I understand.

(Testimony of Lester W. Hurley.)

The Court: But the opinion would not be a part of the decision of the court, anyhow.

Mr. McCormick: That is true, your Honor.

The Court: So the sole purpose of your offer here is to show that this letter and the opinion were brought home to the Edison Company.

Mr. McCormick: That is correct, your Honor.

The Court: And not to bind the Edison Company, necessarily, by the truth of what is said either in the letter or the opinion which was enclosed.

Mr. McCormick: That would be the legal effect, I believe, your Honor.

Mr. Wynn: So limited, we have no objection.

The Court: Very well, Exhibit 16 for identification will be received into evidence for the purpose stated.

(Testimony of Lester W. Hurley.)

PLAINTIFF'S EXHIBIT No. 16

Mr. Thurman L. McCormick.

In the United States District Court for the
District of Kansas—First Division

No. 4974-Civil

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY and SOUTHERN CALI-
FORNIA EDISON COMPANY, LIMITED, a
Corporation,

Defendants.

OPINION

The plaintiff brings this action seeking to quiet title to six certificates representing 575 shares of common capital stock of Southern California Edison Company, Limited, (hereinafter referred to as Edison) alleging that he is the legal and equitable owner and has possession of said stock by virtue of an assignment on February 19, 1929, by the then owners of said stock; that the defendant Lester W. Hurley is asserting ownership of an interest therein, the exact nature of the claim being unknown to the plaintiff; and that the assertion of the claim of the defendant Hurley constitutes a cloud upon the plaintiff's title to said stock.

The defendant Lester W. Hurley denies that the plaintiff is the legal owner of said stock and asserts

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

that he (Hurley) is the owner of an interest therein, and sets up two defenses. First, he denies that he ever executed the instruments of transfer by virtue of which the plaintiff claims ownership of the entire 575 shares of stock. Second, he asserts that at the time the plaintiff alleges the instruments of transfer were executed, he (Hurley) was a minor and if he participated in said transfer and signed the instruments of transfer, he was not advised of and did not know the effect of such transaction; that no consideration was paid to him therefor; and, that if such transaction occurred, it was the result of a conspiracy by Elizabeth J. Price and the plaintiff to cheat and defraud him of his interest in said stock and by reason thereof, the purported assignments and powers of attorney alleged to have been executed by him are void.

The record discloses the following facts. Prior to 1915, William Price lived at Independence, Missouri. His wife was an invalid and Elizabeth J. Burton was employed as a nurse in the Price home. Mrs. Price died about 1912, and thereafter, Elizabeth J. Burton continued in the employment of William Price as his housekeeper for approximately three years. In 1915, said William Price and Elizabeth J. Burton were married, at which time William Price was a man of advanced years and Elizabeth J. Burton was approximately 55 years of age. She had two children by a former marriage,

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

a son, George E. Burton, the plaintiff herein, and a daughter. Her former husband, Robert Burton, died in December, 1908. Immediately after the marriage of Elizabeth J. Burton and William Price, they removed to California where they resided until the death of Price.

Prior to the death of Robert Burton, the daughter of Robert and Elizabeth J. Burton and the sister of George E. Burton, had married and a son, Lester W. Hurley, was born to her on December 18, 1908. In 1924, Lester Hurley's mother died and, therefore, the only heirs of Elizabeth J. Price are her son, George E. Burton, and her grandson, Lester W. Hurley.

There is no indication of any friction or bad feeling between Lester Hurley and his uncle and grandmother, and the grandson, who at an early age had secured employment with the Missouri-Pacific Railway Company, frequently visited in California with his grandmother and his stepgrandfather. George E. Burton, a resident of Kansas City, Kansas, made frequent trips to California to visit his mother and stepfather.

There is no evidence that Mrs. Burton, at the time she entered the employ of William Price, was possessed of any substantial property and it is apparent that William Price was a man of considerable means. During the residence in Califor-

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

nia, William Price invested considerable sums of money in the stock of Edison.

On or about November 20, 1928, the 575 shares of stock involved here stood on the records of Edison in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants with full rights of survivorship, by virtue of a transfer from William Price and Elizabeth J. Price, the then owners of said stock.

William Price died January 5, 1929, in Los Angeles, California. At the time of his death, Elizabeth J. Price and George E. Burton were in Los Angeles and Lester W. Hurley was in Kansas City, Missouri. Elizabeth J. Price and George E. Burton brought the body of William Price to Kansas City, Missouri, from Los Angeles, leaving Los Angeles on January 14, 1929, and arriving in Kansas City, January 17, 1929. The body of William Price was interred at Kansas City, Missouri, on Saturday afternoon, January 19, 1929, and Elizabeth J. Price, George E. Burton and Lester W. Hurley attended the funeral.

Elizabeth J. Price brought the certificates of stock under consideration to Kansas City at the time the body of William Price was brought for interment. An instrument introduced in evidence as plaintiff's exhibit 8, bearing the date of November 19, 1928, purporting to bear the signatures of Elizabeth J. Price, George E. Burton and Lester

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

Hurley, directs the dividends on the stock to be paid to Elizabeth J. Price. This instrument bears the stamped date of December 11, 1928, at the bottom of the instrument, which apparently was the date of its receipt by Edison. Hurley denies that he ever signed or executed this instrument. Under the instrument, Elizabeth J. Price received the dividends on the stock until her death, which occurred December 27, 1943.

Sometime between January 19, 1929, and February 19, 1929, seven instruments designated "Assignment of Stock and Irrevocable Power of Attorney," purporting to bear the signatures of Elizabeth J. Price, George E. Burton and Lester W. Hurley, were executed. These instruments were introduced in evidence as plaintiff's exhibits 1 to 7, inclusive. The plaintiff contends these instruments were regularly and properly executed by the parties. By the terms thereof, the stock involved here was transferred from the names of Elizabeth J. Price, George E. Burton and Lester W. Hurley and re-issued to "Mrs. Elizabeth J. Price and George E. Burton, as joint tenants, with full rights of survivorship," in six certificates of stock. Under these instruments, George E. Burton now claims ownership of the 575 shares of stock. Defendant Hurley denies the genuineness of the signatures on the seven instruments of assignment, purporting to be his signatures, and asserts they are forgeries. No

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

consideration from Elizabeth J. Price or George E. Burton ever passed to Lester W. Hurley for such purported transfers. These seven instruments are undated but show they were received by Edison at Los Angeles on three different dates, viz., Jan. 22 a.m., Feb. 1 a.m., and Feb. 18 p.m., all in 1929. The issue of the six certificates of stock under authority of these instruments was made on February 19, 1929.

The title of the plaintiff in the 575 shares of stock depends upon the validity of these seven instruments. If the instruments are genuine, the title to the stock should be quieted in him. If they are spurious, he has no title to the interest of the defendant Hurley in the stock as it stood on the records of the corporation on November 20, 1928. In analyzing the evidence, the facts upon which the court finds there is, or can be, no dispute will be considered.

1. Upon the death of William Price on January 5, 1929, the 575 shares of stock stood in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants with full rights of survivorship.

2. January 19, 1929, the evident date of the assignments was Saturday and the Brotherhood State Bank at Kansas City closed at 12 o'Clock Noon on that date.

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

3. No consideration of any character was ever paid by Elizabeth J. Price or George E. Burton to Lester W. Hurley, nor was any consideration of any character ever received by Hurley from any other source for the transfer of the interest of Lester Hurley in the 575 shares of stock.

5. The preponderance of the evidence is that Lester W. Hurley had no knowledge that he owned or had any interest in the 575 shares of stock until March 18, 1944.

6. Under the execution of the seven instruments of transfer of the 575 shares of stock between January 19, 1929, and February 19, 1929, the plaintiff had everything to gain and nothing to lose and the defendant Hurley had nothing to gain and everything to lose.

The evidence on whether the signatures of Lester W. Hurley were affixed by Hurley on the plaintiff's exhibits 1 to 7, inclusive, and exhibit 8, is conflicting. The plaintiff testified on his direct examination that the signatures of Lester W. Hurley on exhibits 1 to 7, inclusive, were written by defendant Hurley in his presence at the Brotherhood State Bank in Kansas City (hereinafter referred to as the Bank.) That there were present "Mr. Alberti, my wife (Cecelia C. Burton), my mother (Elizabeth J. Price), and Lester Hurley," and that it occurred sometime during banking hours but he could not

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

remember whether it was in the morning or the afternoon. He was not positive but believed they all used the same pen in signing the seven instruments. He thought Mr. Alberti witnessed all the signatures. He testified that at the time they were in the Bank there was no conversation between his mother, himself and Lester W. Hurley about the transfer of the stock; that he knew of no consideration being paid to Hurley for the transfer; and, that the execution of the seven instruments in the Bank occurred between January 19, 1929, and February 19, 1929.

The memory of the witness with reference to date, time of day and details as to what occurred in the Bank at the time of the purported execution of the seven instruments is very unsatisfactory and throws very little light upon the situation. It leaves much room for speculation, in view of some of the outstanding characteristics of the instruments. These facts are apparent from the face of the instruments: the signatures of George E. Burton and Homer E. Alberti appear to have been written with the same ink which is blue-black in shade; the signatures of Elizabeth J. Price, Lester W. Hurley and Cecelia C. Burton appear to have been written with the same ink which is blue in shade. So the witness is clearly in error in his belief that the signatures all had been written with the same pen. The fact that these characteristics appear leads one definitely to

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

the conclusion that they were written at different times and very likely at different places.

The testimony of Homer E. Alberti is equally very unsatisfactory. He began his testimony with the positive assertion that he remembered the circumstances under which the signatures were affixed to these seven instruments. He testified on cross-examination that he was hazy upon the date, but remembered the occasion "very well," and that he saw Lester W. Hurley affix his signatures to the instruments. Then when certain letters were called to his attention that had passed between the Bank and Edison relative to guaranteeing the signatures of Lester W. Hurley, he showed that he did not remember just how or when the signatures of the various individuals, including his own, were affixed to the instruments, and he entered the field of speculation. The following questions and answers appear in his testimony:

"Q. Mr. Alberti, I notice that there are two signatures of yourself as cashier guaranteeing in one case the signature of Lester W. Hurley and in the other case the signatures of Elizabeth J. Price and George E. Burton. Why was that done separately? A. The fact that there are two separate guaranties leads me to believe that Mrs. Price and George Burton came to my desk on one occasion to affix their endorsements, their signatures, at which time I guaranteed

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

the genuineness of those two signatures, and that Lester W. Hurley came upon another occasion either before or afterwards, I don't know as to that, but that he was not with Mrs. Price and Mr. Burton at the time that they affixed their signatures. Therefore, I guaranteed his signature separately from theirs. Q. Do you have any independent recollection of that? A. I do not. Q. You are basing it entirely on the fact that there are two separate guaranties? A. That is correct, sir. (Examination by the Court:) Q. At the time that they came there to execute these instruments, would you say that Mrs. Price and Mr. Burton and Mr. Hurley all came there together? A. No, sir. It is my best judgment, your Honor, that they did not, but I base that solely on the fact that I did execute separate guaranties. Q. I am going to your personal recollection. Do you remember now, independently of your name as witness, the occasion and whether or not all three of them were there at the same time? A. I don't remember specifically whether all three were there at the same time. Q. Now, you stated a moment ago that you saw each one of them affix the signature? A. Yes, sir. Q. You don't recall then whether Hurley signed at the same time that the others signed, or not? A. I do not. Q. Do you recall at the time

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

that Hurley signed whether or not you had any conversation with him as to the substance of the instrument he was signing? A. I don't remember, sir. Q. Did you consider that it was irregular to insert the name of Mr. Ortman there as one of the grantees in this power of attorney and sign it after the execution of the instrument? A. That name, your Honor, was not inserted by us and did not actually appear on these assignments when I last saw them. Q. You don't know who put that name in? A. No, sir. I have an idea on the subject but I don't know, sir."

* * *

"(Cross-Examination by Counsel:) Q. Have you ever witnessed the signature of an individual without them being present? A. Have I ever done it? Q. Yes. A. I have. I would like to qualify my answer. You asked me the question did I ever witness the signature of an individual where the man was not present. I would say that I did not witness the signature of an individual where he was not present but I have guaranteed the genuineness of the signature."

It is apparent that the witness Alberti had no clear recollection as to what did occur relative to the execution of the seven instruments but it is

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

equally apparent that he relied upon the fact that he witnessed the signature of George E. Burton and guaranteed the signatures of Elizabeth J. Price, George E. Burton and Lester W. Hurley, and that he reasoned that he would not have done those things unless they were all written in his presence.

These seven instruments show that the signatures of Elizabeth J. Price and Lester W. Hurley were both witnessed by Cecelia C. Burton and that only the signature of George E. Burton was witnessed by Alberti. From the receiving stamps placed upon the back of the assignments by Edison and the correspondence, it is evident that Alberti transmitted the purported assignments and they were received in Los Angeles on January 22, but that none of the signatures was guaranteed. They were then returned and Alberti guaranteed the signatures of Elizabeth J. Price and George E. Burton and they were received in Los Angeles on February 1. Later they were returned for the guaranty of the signatures of Lester W. Hurley, after which guaranty by Alberti, they were received by Edison on February 18 and the transfers were then made. No satisfactory excuse is given by Alberti for not guaranteeing all three signatures at one and the same time. All of the signatures were on the assignments before they left Kansas City on January 19 and if the signatures were not guaranteed until February

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

1, they could have been guaranted all at the same time.

The plaintiff and the defendant each produced as a witness a handwriting expert. Both of these experts appeared to be competent in their line of work. Herbert J. Walter, for the plaintiff, testified positively that in his judgment the signatures of Lester Hurley on the disputed instruments were written by the defendant Hurley. E. R. Cochran, for the defendant Hurley, testified as positively that in his opinion the signatures of Lester W. Hurley on the disputed instruments were not written by the defendant Hurley. In connection with other eminent qualities possessed by expert witnesses, one characteristic usually is apparent—they testify in behalf of the side which has had them subpoenaed. The testimony of experts, therefore, is often of very little assistance to the court. They merely emphasize the peculiarities and similarities of writings which are clearly apparent to a close observer of the writings under consideration. In this connection, it is obvious to the most casual observer that in the seven instruments of transfer, the capital letter "H" at the beginning of the Hurley signatures is in no instance like the letter "H" in all the admitted signatures. It is equally apparent that in the signatures of Lester W. Hurley as they appear in all seven instruments, in no instance is there a break between the letters "s" and "t" in the name

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

Lester, which does appear in practically all of his admitted signatures.

The testimony of Lester W. Hurley is clear and positive that the signatures purporting to be his signatures on all seven instruments are not his signatures and were not written by him.

Every circumstance surrounding the purported transaction sustains his testimony. The evidence is clear that the defendant, at the time of the purported transfer, did not know he had any interest in the stock claimed to be transferred. There is not one word of testimony in the record that anyone ever had any conversation with him prior to, or contemporaneous with, the purported transfer concerning it. The purported transfer of necessity would have had to occur on or before January 19, 1929, to have permitted it to reach Los Angeles on the morning of January 22, 1929. The 19th day of January, 1929, was Saturday and the Bank closed at 12 o'clock noon that day. The funeral of William Price was in the afternoon of January 19, 1929. Under these circumstances it is extremely unlikely that such transfers were executed on that date. The following day was Sunday and it would not have occurred on that day. No consideration ever passed to Lester W. Hurley for such transfer. By such a transfer he would gain nothing and lose everything he might own in the stock. There was no good or practical reason for such a transfer as far as he was

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

concerned. We are not called upon to speculate as to who did affix the name of Lester W. Hurley on these instruments. The question to be determined is whether or not it was done by Lester W. Hurley, and upon this point I conclude that it was not done by the defendant Hurley and that such signatures are spurious.

Exhibit 8 offered by the plaintiff is a purported direction order to pay dividends on the stock under consideration. This instrument purports to have been executed by Elizabeth J. Price, George E. Burton and Lester Hurley. The defendant Hurley denies that the signature on this instrument was written by him. This instrument bears the date of November 19, 1928. The stock record of Edison discloses that the 575 shares of stock, which the dividend direction order purports to cover, were issued November 20, 1928. No good reason is apparent why such a dividend direction order should have been executed on November 19, 1928, by Lester W. Hurley or George E. Burton. But let us examine this instrument. The date and the names in the body of the instrument, the signature of Elizabeth J. Price, the address of George E. Burton, the words "signitures," and "address," the address for sending the dividends, as well as the notation "(575 shares)" all are written in blue-black ink and apparently at the same time and by the same person. While the signatures of George E. Burton and

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

Helen Burton, her address, the signature of Lester Hurley and his address all are written in the same shade of blue ink. The capital letter "H" in the questioned signature in the name Hurley on this instrument more nearly approximates the letter "H" in all the admitted signatures of Lester W. Hurley than any other disputed signature, still it too has a slight defect. But the name Hurley in this signature is improperly spelled, being spelled Hurleey instead of Hurley. Here again we find no break between the letters "s" and "t" in Lester as it appears in practically all of the admitted signatures of Lester W. Hurley.

Helen Burton, the daughter of George E. Burton, testified positively that she saw Lester W. Hurley write the name "Lester Hurleey," as it appears on the instrument, and witnessed that signature. In view of the facts, that she was only sixteen years of age at the date of the instrument, that she had no recollection of the character of the instrument which she testified was signed by Hurley, that the name of Hurley is misspelled on the instrument, that the many habitual characteristics of the admitted signatures of Lester W. Hurley are absent in the disputed signature, coupled with the positive testimony of Hurley that he did not write the disputed signature, and there appearing in the record no good reason why Lester Hurley should have executed such an instrument as to the 575 shares

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

of stock on November 19, 1928, I am of the opinion that the signature on this instrument, purporting to be the signature of Lester W. Hurley, is not his genuine signature and that he did not write it.

Another circumstance, which to the court is very significant, is that the only witness to Lester Hurley's signature to the seven assignments of stock was Cecelia C. Burton, the wife of George E. Burton, now deceased, and the only signature witness to the dividend order, dated November 19, 1928, is the sixteen year old daughter of George E. Burton. It would have been a very easy matter for George E. Burton to have presented these instruments with the name of Lester W. Hurley attached thereto, advising his wife and daughter that Hurley had signed the instruments and that he desired them to witness Hurley's signature.

These conclusions are decisive of the case. However, the defendant has interposed another defense and, under the circumstances surrounding the various phases of the case, this should have the consideration of the court.

The defendant Hurley states in effect that if the court should find against him as to the validity of the signatures, then the court should find that the purported transfer of the 575 shares of stock is void for the following reasons: First, that at the time the purported transfers were executed, he was a minor, twenty years of age, and that upon dis-

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

covery of the true situation he disaffirmed the transaction, and, second, that his signatures to the transfer instruments were obtained by means of fraud practiced upon him by his grandmother, Mrs. Elizabeth J. Price, and his uncle, George E. Burton, and that such fraud was not discovered by him until March 18, 1944.

The evidence discloses that on November 26, 1928, there were issued to Mrs. Elizabeth Jane Price, George E. Burton and Lester Hurley 88 shares of common stock and 191 shares of preferred stock of Edison, as joint tenants with rights of survivorship, and that this stock stood in the names of said parties at the date of the death of Elizabeth J. Price on December 27, 1943. Elizabeth J. Price received the dividends thereon until her death. Elizabeth J. Price was resentful of any inquiry into her business affairs. At times she had sought and procured from Lester Hurley proxies on stock in said corporation. She told him that if she continued to feel kindly toward him he might benefit by her ownership in such stock upon her death. Under such circumstances, it was but natural that Lester W. Hurley would have been very reluctant to make inquiries concerning the stock and in no way to disturb his grandmother concerning it. It is most probable that such proxies concerned only the 88 shares of common and the 191 shares of preferred stock that stood in his name on the records of the

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

corporation and in no way could have had any connection with the 575 shares that had been transferred from his name on the records of the corporation. There is no evidence that anyone ever discussed the ownership of the 575 shares of stock with Lester W. Hurley prior to the death of Elizabeth J. Price. The evidence is clear that Hurley never knew that the 575 shares of stock had ever stood in his name prior to March 18, 1944.

At the time of all of these purported transactions, Lester W. Hurley was a minor. It was clearly the duty of Elizabeth J. Price and George E. Burton, standing in the close relationship they did, which in itself was one of confidence and trust, to explain the transfer in detail to Hurley and to explain in detail the effect of the direction order to pay dividends. This was not done, so far as this record discloses.

Section 38-102 G. S. of Kansas, 1935, reads:

“A minor is bound, not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of the contract and remaining within his control at any time after his attaining his majority.”

The disaffirmance of the transaction is based upon fraud claimed to have been practiced on the minor,

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

Lester W. Hurley, and the cause of action accrued upon his discovery of the fraud which would be March 18, 1944. Whether the disaffirmance of such a contract is within a reasonable time after attaining majority is a question to be determined by the facts surrounding the transaction and the law governing the situation, being a mixed question of law and fact. There was no consideration for the transfer. The defendant Hurley was a minor and had implicit faith in his grandmother and his uncle. By virtue of the purported transfer of the 575 shares of stock, the grandmother gained the dividends on the stock for many years, the uncle would gain the ownership of the stock at his mother's death, and the defendant gained nothing and lost his property. The grandmother, by her attitude concerning her property, had created a situation that discouraged any investigation about her property and business upon the part of the defendant Hurley until her decease.

In *Brown v. Staab et al.*, 103 Kan. 611, 176 P. 113, 114, the court, in passing upon the Kansas statute, *supra*, well expressed the principle in these words:

“* * * The statute declares that he is bound unless he disaffirm within a reasonable time after he attains majority. Much learning has been expended by the courts in determining what, in a given case, will constitute a reason-

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

able time in which to disaffirm. It is said to depend generally upon the circumstances of each case, and sometimes becomes a mixed question of fact and law, and sometimes a mere question of law. It has been held that the question of what constitutes a reasonable time is a question of fact for the determination of the court or jury, dependent upon the nature of the action. *Wiley v. Wilson*, 77 Ind. 596, and *Scott v. Buchanan*, 11 Humph. (Tenn.) 468. The general rule is that a reasonable time does not in any case extend beyond the period of the statute of limitations (*Nathans v. Arkwright*, 66 Ga. 179; 22 Cyc. 553), and the weight of authority seems to be that it is always safe for a court of equity to follow by analogy the statute of limitations."

In *Ralph v. Ball et al.*, 100 Kan. 460, 164 P. 1081, 1082, the court said:

"* * * In this instance the plaintiff did not know and could not know that she had any interest to be promoted by disaffirmance until the death of Grace Ball on April 20, 1900. If the section were to be applied by analogy, she should have two years after that time within which to disaffirm, and she acted within a shorter period. The section has no application, however, because the Legislature chose to limit the time

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

within which disaffirmance may take place, not by counted years, but by reasonableness under all the circumstances. Circumstances may readily be imagined which would warrant disaffirmance five years, and more than five years, after majority.”

So in the case at bar, the defendant did not know and had no reason to investigate or inquire into the ownership of the 575 shares of stock until after the death of Elizabeth J. Price. The record discloses that at the very first occasion that would suggest such inquiry, the defendant seized upon it and diligently pursued the investigation and upon the discovery of the true situation, promptly disaffirmed the transfer of the stock purported to have been authorized by him.

Section 60-306 G. S. of Kansas, 1935, on the limitation of action, provides for actions that must be brought within two years as follows:

“An action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.”

While it is true that inadequacy of consideration alone is insufficient to establish fraud, an utter failure of any consideration for the transfer of valuable property is a strong circumstance when taken with other circumstances in the case tending to show

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

fraud. Here the defendant, a minor, would be contracting with people of mature years and business judgment in whom he had great confidence. In their dealing with him they were procuring, without consideration, a large amount of valuable property at no expense to themselves.

In *Johnson v. Northwestern Mutual Life Insurance Company*, (Minn.) 26 L.R.A. 187, 191, the court, in passing upon the principle, used this apt language:

“* * * Where a contract is improvident and unfair, courts of equity have frequently inferred fraud from the mere disparity of the parties. If this is true as to adults, the rule ought certainly to be applied with still greater liberality in favor of infants, whom the law deems so incompetent to care for themselves that it holds them incapable of binding themselves by contract, except for necessities. In view of this disparity of the parties, thus recognized by law, every one who assumes to contract with an infant should be held to the utmost good faith and fair dealing. We further think that this disparity is such as to raise a presumption against the fairness of the contract, and to cast upon the other party the burden of proving that it was a fair and reasonable one, and free from any fraud, undue influence, or overreaching. A similar principle applies to all

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No. 16—(Continued)

the relations, where, from disparity of years, intellect, or knowledge, one of the parties to the contract has an ascendancy which prevents the other from exercising an unbiased judgment—as, for example, parent and child, husband and wife, guardian and ward. * * *

In view of the circumstances as disclosed by the record, even had the defendant Hurley executed the instruments of transfer (which conclusion is not sustained by satisfactory evidence), the entire transaction was so tainted with deception practiced upon the defendant by his grandmother and his uncle, that the transfer of the 575 shares of stock cannot be approved by the court and thus become effective. Even had the defendant Hurley executed the instruments of transfer while a minor, his notice to the corporation under date of March 20, 1944, shown in the record as defendant's exhibit "L," which came to the attention of the plaintiff prior to the bringing of this action, constituted a complete disaffirmance of such transfer within a reasonable time after reaching his majority, upon the discovery that such transfer was claimed.

The Edison Company was originally made a party defendant, but a motion to quash the service on said defendant was sustained prior to the trial of this case, and, therefore, the Edison Company has been disregarded in this opinion.

(Testimony of Lester W. Hurley.)

Plaintiff's Exhibit No.16—(Continued)

Judgment is rendered for the defendant generally, and specifically that he is the owner of an undivided one-half interest in the 575 shares of stock in question. An exception is allowed the plaintiff.

Findings of fact, conclusions of law, and a form of judgment consistent with this opinion may be submitted within fifteen days from the date of filing of this opinion.

.....,

United States District Judge.

Dated this 6th day of June, 1945.

Admitted November 12, 1946.

Q. (By Mr. McCormick): Now, Mr. Hurley, it has been stated in the courtroom or a question asked today relative to the situation that developed where you were a defendant and appeared [36] in this suit of Burton vs. Hurley in the Kansas court. In that connection I wish to ask you as to whether or not you did file, prior to that suit which was tried in the Kansas court, a suit in Missouri upon which you were unable at the time to obtain service upon the defendant in that suit, Mr. Burton?

A. I did, and that is correct.

Q. And it was after having exhausted your

(Testimony of Lester W. Hurley.)

efforts to bring Mr. Burton into the court in Missouri that this suit which Mr. Burton had filed some weeks subsequent to the filing of your suit, that you did appear and contest the suit in Kansas?

A. Yes, sir; that is correct.

Mr. McCormick: I now present to the clerk for the purpose of identification a letter written by the Southern California Edison Company to the Brotherhood State Bank of Kansas City, Kansas, under date of February 7, 1929, addressed to the "Attention: H. E. Alberti."

The Clerk: 17 for identification.

The Court: I will take up another matter at this juncture.

(Interruption for other court proceedings.)

Mr. McCormick: I now offer into evidence Plaintiff's Exhibit 17, being a letter of the Southern California Edison Company to the Brotherhood State Bank of Kansas City, Kansas and dated February 7, 1929.

Mr. Wynn: No objection. [37]

The Clerk: 17 in evidence.

The Court: Plaintiff's Exhibit 17 is received into evidence.

(Testimony of Lester W. Hurley.)

PLAINTIFF'S EXHIBIT No. 17

Southern California Edison Company
Edison Building
Los Angeles, California

February 7, 1929.

Brotherhood State Bank,
Kansas City, Kansas.

Attention: H. E. Alberti.

Gentlemen:

We have your letter of January 29th and are returning again the assignment on which we asked that you have the signature guaranteed. We have on file in this office, the signature of Mrs. Elizabeth J. Price and George E. Burton but do not have the signature of Lester W. Hurley, in such connection that it would be of use here. Will you please have his signature guaranteed by his bank and return it to us.

In connection with the creating of a joint tenancy, it is impossible to join the parties in ownership using the word "or" between the names as this does not establish ownership definitely in either party. In order that joint tenancy may be created, the parties must be definitely joined in ownership. For that reason, the use of the word "and" is necessary and this is the accepted form by all corporations and the only form that is approved by the New York Stock Exchange for creating a joint tenancy in securities.

(Testimony of Lester W. Hurley.)

The clause appearing in the title: "as joint tenants with full rights of survivorship" is the clause which passes title to the survivor upon the death of one, and when a joint tenancy is created the property belongs to the two parties jointly at all times and not during the life of one only, as suggested in your letter, but the title passes to the survivor upon the death of one without the probate of the estate.

When we have the proper guarantee of signature in this connection, we will be pleased to make the transfer requested.

Yours very truly,

/s/ O. V. SHOWERS,
Assistant Secretary.

JFE:OS

Ediphoned

Admitted November 12, 1946.

Mr. McCormick: I now present to the clerk a letter dated February 15th, 1929, addressed to the "Southern California Edison Co., Los Angeles, Calif.," to the "(Attn. O. V. Showers, Asst. Secy.)," signed by "Homer E. Alberti."

Mr. Wynn, do you not have the original of that letter?

Mr. Wynn: No. I compared a copy and I have no objection to its admission.

Mr. McCormick: Thank you.

The Clerk: 18 in evidence.

(Testimony of Lester W. Hurley.)

PLAINTIFF'S EXHIBIT No. 18

Feb. 15th, 1929.

Southern California Edison Co.,
Edison Building,
Los Angeles, Calif.

Gentlemen:

(Attn. O. V. Showers, Asst. Secy.)

In keeping with yours of the 7th instant, we have guaranteed the genuineness of the signature of Lester W. Hurley as it appears upon the enclosed assignment blanks, having previously guaranteed the signatures of Elizabeth J. Price and George E. Burton.

We have also changed these assignments at the direction of the interested persons, to read Mrs. Elizabeth J. Price and George E. Burton, as joint tenants, with full rights of survivorship, thus following out your instructions in the matter and thus providing for the automatic reversion of the stock in question to either Mrs. Price or her Son, George Burton, at the time of the death of either one or the other of them.

We believe that the stock in question, already in your possession, is now ready to be assigned and you are instructed to forward the new stock certificates, when issued, direct to Mrs. Price at #1301 West 52nd Street, your city, since Mrs. Price is

(Testimony of Lester W. Hurley.)

returning to her home there, either today or tomorrow. Mr. Burton will also be found at that address during the coming days. However, he may return to Kansas City but that in itself will not affect the status of this matter. We take it for granted that Mr. Burton may maintain his legal residence here. Any further correspondence in connection with this matter will be had direct to Mr. Burton or Mrs. Price at the Los Angeles address.

Yours very truly,

.....,

Cashier.

HEA:MS

Admitted November 12, 1946.

The Court: Is that a copy of a letter?

Mr. McCormick: Yes, your Honor.

The Court: Are these exhibits which have been taken from a deposition?

Mr. McCormick: No, your Honor. Those that were taken from depositions have heretofore been introduced into evidence.

The Court: Very well. The letter last offered is in evidence now as Exhibit 18.

Mr. Gunter: As the court may observe, a great many of these or, I think, practically all of these do have marks on them as if they were exhibits, but those marks were in the other trial.

(Testimony of Lester W. Hurley.)

The Court: By "the other trial" that would be the trial [38] of the Kansas action?

Mr. Gunter: Yes, your Honor.

Mr. McCormick: Yes, your Honor. You may inquire.

Cross-Examination

By Mr. Wynn:

Q. Mr. Hurley, you first went to work for the Missouri Pacific Railroad when you were 15 years of age? A. That is correct; yes, sir.

Q. And in what capacity at that time?

A. Call boy.

Q. What were your duties as such?

A. Calling engine crews.

Q. Calling them from where, their homes, residences?

A. From the roundhouse to the restaurant close by.

Q. To the restaurant?

A. That is right, restaurant and hotel.

Q. Did you have any duties in the restaurant and hotel? A. No, sir.

Q. So that your duties, then, consisted only of calling these crews from the roundhouse to the hotel? A. That is correct.

Q. And how long did you work in that capacity?

A. To the best of my recollection, about nine months or a year.

Q. So until you were approximately the age of 16 that [39] was your duty?

(Testimony of Lester W. Hurley.)

A. That is correct.

Q. Then you still continued to work for the Missouri Pacific Railroad?

A. That is correct.

Q. And in what capacity then?

A. File clerk.

Q. Where were you so employed?

A. In the master mechanic's office.

Q. And where was that located?

A. The East Bottom shops, East Bottoms, Kansas City, Missouri.

Q. How long did you continue in that employment?

A. As I recall, approximately six months.

Q. And what were your duties there?

A. Filing correspondence.

Q. Anything else? A. No.

Q. And in filing the correspondence you had to inspect the correspondence to see where it went?

A. Well, I addressed part of it myself.

Q. You addressed it in your own handwriting?

A. That is correct.

Q. That is the out-going correspondence?

A. Yes, sir. [40]

Q. So that your duties consisted of mailing out-going correspondence? A. That is correct.

Q. As well as filing incoming correspondence or copies of out-going correspondence?

A. That is correct.

Q. Were these files kept under your supervision that you filed papers in? A. Yes, sir.

(Testimony of Lester W. Hurley.)

Q. And when you had occasion to make up a new file, would you make one up?

A. That is right.

Q. From information you obtained from the correspondence you were dealing with?

A. That is correct.

Q. Did you have occasion to personally write any correspondence in that capacity?

A. No, sir.

Q. How long were you so employed?

A. I would say, to the best of my recollection, about six months or nine months.

Q. And you continued in the employ of the Missouri Pacific?

A. Yes, sir.

Q. And in what capacity next? [41]

A. As call boy.

Q. And what were your duties as a call boy?

A. Calling the crews, the same position I had previously held.

Q. Did you receive an increase in salary with that change?

A. That was a reduction in force. They cut off some clerks and I was compelled to exercise my seniority back to that of call boy.

Q. How long did you continue as a call boy the second time?

A. Let me see. To about 1927, to my best recollection.

Q. Then there was another change in your employment, that is, the duties of your employment?

A. That is correct.

(Testimony of Lester W. Hurley.)

Q. And what did you then do?

A. Report clerk.

Q. Will you explain what your duties were?

A. To maintain and compile various mechanical department reports.

Q. You would compile these reports from what information?

A. Well, the information I received from various sources.

Q. That is, from various departments of the Missouri [42] Pacific Railroad System?

A. No. From one locality there in the shops.

Q. The shops which are located in Kansas City, Missouri?

A. Yes, sir; that is right.

Q. What departments were involved?

A. The mechanical departments.

Q. Well, all mechanical? I mean what various mechanical departments?

A. That is all. They have the roundhouse and the shops there.

Q. These reports were to whom?

A. Well, to the various offices on the railroad they were mailed to.

Q. And you prepared those reports. Did you prepare them in your own handwriting?

A. Well, as I recall, there was one shop report I made on the typewriter.

Q. And you made it directly on the typewriter or did you dictate the report and have it transcribed by a stenographer?

(Testimony of Lester W. Hurley.)

A. I made it on the typewriter myself.

Q. And others were made in your own handwriting?

A. That is right; yes, sir.

Q. How long did you serve in that capacity?

A. To my best recollection, it was around the year 1931 or '2.

Q. And that was, somewhat roughly, three or four years [43] in that work?

A. Yes, sir.

Q. So that from the period between 1927 and 1931 or '32, your employment was as you have just last described?

A. That is correct.

Q. At that time where did you live?

A. 5716 Scarritt, Kansas City, Missouri.

Q. You lived there all during that period of time?

A. Yes, sir.

Q. You were married?

A. No, sir.

Q. You were living alone?

A. Lived with my father. My mother was dead.

Q. Up until 1931 or 1932?

A. Yes, sir.

Q. Did you have a telephone there?

A. Yes, sir.

Q. During what period of time did you have a telephone?

A. Well, I can't recall as to that. It was in my father's name. It was not in my name.

Q. Did you have a telephone at that address all during the period from 1927, that is to say, until 1931 or 1932?

A. I don't know as to that.

Q. You don't know. In your employment did you ever have occasion to examine or deal with or

(Testimony of Lester W. Hurley.)

file photostatic copies of instruments?

A. Not that I know of; no, sir.

Q. Not that you know of? [44]

A. No, sir.

Q. But you may have had?

A. Well, there wasn't any photostatic equipment there. There might have been blueprints, something like that, but not photostatic equipment.

Q. Can you say now that you did not at any time receive, file, deal with, or forward photostatic copies of documents?

A. Well, my memory is not that good that I can tell whether I filled a piece of paper there that was a photostat.

Q. Did you ever reside with you uncle, Mr. George Burton?

A. I did; yes, sir.

Q. What time?

A. It was in the years 1924 and '25, part of the year '25.

Q. And approximately how long did you live with him?

A. Approximately nine months.

Q. And you were employed at that time?

A. Yes, sir.

Q. Did you pay him anything for board and room?

A. Yes, sir.

Q. During the time you lived with him?

A. That is correct.

Q. How many children of your uncle resided with him [45] at that time?

A. Eight, I believe. Just a moment.

Q. And included there was Helen Burton?

(Testimony of Lester W. Hurley.)

A. May I correct that statement? There was a few of them married there. There were eight children, but at that time I don't recall right offhand how many were married.

Q. Helen Burton resided in the same home at the same time? A. Yes, sir; that is correct.

Q. And she is the same Helen Burton you have already referred to in your testimony?

A. That is right.

Q. I call your attention to Plaintiff's Exhibits 1 through 7, inclusive, which have been admitted in evidence and which you have previously examined. When did those original documents first come to your attention? When did you first see them?

A. Well, let's see. It was about two weeks previous to the preceding trial.

Q. And that trial was when?

A. In January 1944—'45.

Q. 1945? A. Yes, sir.

Q. Prior to that time, when you first saw these originals, had you ever seen what purported to be photostatic copies of those documents? [46]

A. I had.

Q. And when did you first see them?

A. That was shortly after March the 18th, 1944.

Q. And you examined those photostatic copies or what purported to be photostatic copies?

A. Yes, sir.

Q. And you then reached some conclusion as to

(Testimony of Lester W. Hurley.)

whether the purported signatures of Lester Hurley appearing thereon were your own?

A. I beg your pardon?

The Court: Please read the question, Mr. Reporter.

(Question read by the reporter.)

A. I reached a conclusion; yes, sir.

Q. (By Mr. Wynn): And what was that conclusion?

A. That they were not my signatures.

Q. Now, at that time and upon examining the photostatic copies, was that merely your opinion or your best belief, or had you reached a positive, definite conclusion that they were not your signatures?

A. Yes, sir; they were not my signatures, positive.

Q. You were positive of that? A. Yes, sir.

Q. There was no question in your mind whatsoever? A. That is right.

Q. Upon examining the photostatic copies? [47]

A. That is right.

Q. And then subsequently you examined the originals? A. That is correct.

Q. Now, did you change your opinion in any way when you examined the originals? A. No, sir.

Q. You were still positive; no question in your mind whatever that they were not your signatures?

A. That is right.

Q. At any time from the date when you first

(Testimony of Lester W. Hurley.)

testified that you learned of the existence of some 575 shares of stock in the Edison Company in which you had some interest, did you ever at any time entertain any doubt whatever as to whether or not those signatures were yours?

A. I didn't quite get the connection of the question there. Would you please read it?

The Court: Please read it, Mr. Reporter.

(Question read by the reporter.)

The Witness: I don't get the connection of the question, your Honor.

The Court: The question is: Did you from the time you learned that those certificates had been in your name, had been issued in your name, did you at any time from that time on ever entertain a doubt as to whether or not you had signed the assignments? [48]

The Witness: "Any doubt"—no, sir.

The Court: Is that your question, Mr. Wynn?

Mr. Wynn: Yes, sir.

A. No, sir; I didn't entertain any doubt.

The Court: Did you ever at any time entertain any doubt about it?

The Witness: No, sir.

Q. (By Mr. Wynn): You recall testifying in the case of Burton versus Hurley in the District Court of Kansas, do you not? A. Yes, sir.

Q. I show you transcript of your testimony in that action, direct your attention to page 3 thereof, the last question appearing thereon, and your

(Testimony of Lester W. Hurley.)

answer; and on page 4, the first question and your answer. Will you please read them to yourself?

A. Yes, sir; I have read it.

Q. I will now read you the questions and answers to which I directed your attention, as follows:

“Q. Now, Mr. Hurley, I hand you Plaintiff’s Exhibits 1 to 7 which show the issuance by the Southern California Edison Company on November 20, 1928, of the seven certificates representing 575 shares of stock, and ask you to look at the assignment which purports to have been made of this stock [49] and attached on a separate sheet on the back of the certificates, and carefully note the signature ‘Lester Hurley’ that appears thereon and tell the court as to whether or not, to your knowledge, that is your signature.

“A. No, sir.”

Did you so testify?

A. That is right.

Q. The following question:

“To the best of your knowledge and belief, that signature appearing upon each of these seven instruments is not your signature?

“A. No, sir.”

Did you so testify?

A. That is correct.

Q. Now, you testified in court this morning on direct examination positively that these questioned signatures on the exhibits in question were not your signatures?

A. That is right.

(Testimony of Lester W. Hurley.)

Q. Is there any reason why at the present time you should be any more positive than you were at the trial of the preceding action in January, 1945?

A. No, sir.

Q. None at all? A. No, sir. [50]

Q. Then, if, when you testified in January of 1945, it was only "to the best of your knowledge and belief," that is your present view?

A. That is right.

Q. To the best of your knowledge and belief?

A. That is right.

The Court: Did you answer?

The Witness: Yes, sir, your Honor.

Q. (By Mr. Wynn): Do you want to be heard by this court as to say positively that those cannot be your signatures? Is there any question? Is there any question in your mind?

Mr. McCormick: Just a minute, if your Honor please. I object to that for the reason that the transcript to which he is referring is selected—a question which does not give a fair statement of the witness' testimony, because he did testify as positively to other questions presented as he did at the present time. I think it is improper to select out those statements.

The Court: Objection overruled. Counsel may inquire.

Mr. Gunter: Only, I think, another question is pending.

The Court: I suggest you rephrase it. Put another question.

(Testimony of Lester W. Hurley.)

Mr. Wynn: I think there is another question pending, if the court please, after Mr. McCormick's objection. May that be read?

The Court: There are two questions, I believe, pending. [51] You can read the last two questions, Mr. Reporter.

(Record read by the reporter.)

The Court: I would suggest you rephrase those last two into one question. There are two questions in effect.

Mr. Wynn: I will withdraw the questions, at the court's suggestion.

Q. At the present time is there any question whatever in your mind as to whether or not the signatures "Lester Hurley" appearing on Plaintiff's Exhibits 1 through 7 are or are not your valid signatures?

A. They are not my valid signatures.

Mr. Wynn: I object to the answer as not responsive.

The Court: The question is: Is there any doubt in your mind about it?

The Witness: No, your Honor.

The Court: That is your question, is it not?

Mr. Wynn: That is correct.

The Witness: I beg your pardon. I didn't understand it.

Q. (By Mr. Wynn): Was there any doubt in your mind in January of 1945, at the trial of the prior action? A. No, sir.

(Testimony of Lester W. Hurley.)

Q. It is a fact, is it not, that in the trial of the prior action, or rather in the pleadings therein—by that reference I mean the case of Burton versus Hurley in the District Court of Kansas—that in your pleadings you took [52] the position that either you had not signed those documents or, if you had signed them, it was because of a conspiracy between your grandmother and your uncle?

Mr. Gunter: Objected to as calling for a legal opinion of the witness.

The Court: The documents would be the best evidence.

Mr. Wynn: Correct. Will counsel stipulate that in the prior action the pleadings were filed on behalf of this party, Lester W. Hurley, in which it was alleged on his behalf that he did not execute said instruments, Plaintiff's Exhibits 1 through 7, inclusive, and that if he did execute them, it was due to conspiracy to defraud him on the part of his grandmother and his uncle?

Mr. McCormick: I will state, if the court please, that there were two grounds upon which the petition was drawn in that action: One, in which forgery was definitely and specifically charged; and the additional ground, upon which it was charged that if, in any event, the signatures were proven or established to the satisfaction of the court that they were the genuine signatures of Lester Hurley, that they were signed without a realization and understanding of the nature of the instruments being

(Testimony of Lester W. Hurley.)

so signed, and were brought about by reason of a misrepresentation and deceit practiced upon him at the time.

The Court: There were two issues tendered, one that [53] denied that he executed the assignment, and the other, in the alternative, that if the court found he did, that he was a minor and disaffirmed them.

Mr. McCormick: And that no consideration was paid; that is true, your Honor; and it was upon both, and the case was tried upon both issues.

The Court: Do you accept that statement?

Mr. Wynn: I will accept that, yes. And I might ask, further, if counsel has copies of the answer or cross-complaint filed on behalf of their client in that action, that I may be able to question him with reference thereto?

Mr. McCormick: So far as the pleadings, I do have them and they will be made available to counsel if he desires them, although I wish it to be known that the witness did not pass upon the nature of the pleadings or actions, which I think the court will take judicial notice of that fact, but I think it is only fair to the witness.

The Court: Is the document verified by the witness?

Mr. McCormick: No, sir. It is a petition filed on his behalf by counsel employed by him at the time.

The Court: You have offered here the findings and judgment in the action. If counsel wishes to

(Testimony of Lester W. Hurley.)

offer the pleadings, I think the offer would be very appropriate to accompany the findings and the judgment.

Mr. McCormick: I will be very glad to produce them. [54]

The Court: In the event they are received into evidence, the pleadings might be used now for the purpose of examination and later offered, if counsel is so advised.

Mr. Wynn: Yes, I will proceed now, with the court's permission, and when convenient take up the pleadings.

The Court: Very well.

Q. (By Mr. Wynn): Mr. Hurley, do you have at the present time a signature which you consider your customary signature? A. Yes, sir.

Q. How do you customarily sign your name when you are signing your signature?

A. "L. W. Hurley."

Q. "L. W. Hurley"? A. That is right.

Q. Have you on occasion used the signature "Lester W. Hurley"? A. Yes, sir.

Q. Do you use that on occasion at the present time? A. Not generally speaking, no.

Q. In the years 1928 and 1929 did you have a customary signature?

A. As far as I know, I have not changed it any.

Q. So the best of your recollection is that at that time your customary signature was "L. W. Hurley"?

(Testimony of Lester W. Hurley.)

A. That is right. May I add, your Honor, that in [55] endorsing checks you usually endorse them the way the signature or the check is made out.

Q. Oh, yes. If the check were made out to you as "Lester Hurley," you would customarily endorse it as "Lester Hurley"? A. That is right.

Q. And if it were made to "Lester W. Hurley," you would customarily so endorse it?

A. That is right.

Q. But at all times when you were called upon to affix your signature to a document you would customarily sign "L. W. Hurley"?

A. Well, I don't know as I would. I might sign it any way.

Q. Well, yes, you might have signed it any way, but you testify that customarily you signed "L. W. Hurley"?

A. That was my general way of signing my name. I have signed it various ways, though, in my lifetime.

Q. That is right. If you were called upon to sign a document, though, your first reaction would be to sign it "L. W. Hurley" unless there were some reason for you to sign it another way; isn't that correct?

A. Well, as I say, I signed it various ways.

The Court: But that is not the question, Mr. Hurley. The question is: suppose you go into a hotel to register, [56] how would you register?

The Witness: I would register "L. W. Hurley."

(Testimony of Lester W. Hurley.)

The Court: If you signed a book for a guest, how would you register?

The Witness: "L. W. Hurley."

The Court: In other words, unless you were called upon to make it "Lester," you just signed it "L. W."?

The Witness: That is correct; yes, sir.

Q. (By Mr. Wynn): Do you know of the location of the Union Station in Kansas City, Kansas?

A. There is no Union Station in Kansas City, Kansas.

Q. Kansas City, Missouri? I misspoke myself.

A. The South-Central location of the downtown section.

Q. In the years 1928 and 1929 do you know where your uncle George Burton resided?

A. 1046 Ann Avenue, Kansas City, Kansas.

Q. How far away was that from the Union Station?

A. Oh, I should judge approximately eight or ten miles.

Q. You resided at that time, you testified, at an address on Scarritt Avenue?

A. That is correct.

Q. How far away was that from the Union Station?

A. Approximately seven miles, I should say.

Q. In an opposite direction?

A. Yes, sir. [57]

Q. So that the distance from your residence to

(Testimony of Lester W. Hurley.)

that of your uncle's at that time was approximately 15 miles?

A. Well, not quite that far. It would be an out-of-the-way way to go to the Union Station to go the other way.

Q. Are you familiar with the location of the Brotherhood State Bank? A. I am; yes, sir.

Q. It was in the same location in 1928 that it is now?

A. Well, I know where it is now located; yes, sir.

Q. Do you know where the Brotherhood State Bank was located in 1928? A. No, I don't.

Q. Do you know where the funeral of your grandfather took place? A. Yes, sir.

Q. Where was that?

A. Gibson & Sons over on Kansas side at 7th and State.

Q. Where was that in relation to the residence of your uncle at that time?

A. He lived in the 1000 block on Ann Avenue. About eight blocks, I should guess.

Q. From the undertaking parlor?

A. Yes, sir.

Q. Did you have an automobile at that time?

A. No, sir. [58]

Q. But you attended the funeral of your grandfather or, rather your step-grandfather?

A. That is correct.

Q. And that, you testified, was on January the 19th of 1929? A. Yes, sir; that is right.

(Testimony of Lester W. Hurley.)

Q. As a matter of fact, you acted as a pall-bearer? A. That is correct.

Q. What time of the day did that funeral take place? A. In the afternoon.

Q. About what time?

A. Well, I don't recall the time. It was in the afternoon as close as I can get to it.

Q. But you are positive that that was on January 19th of 1929? A. Yes, sir.

Q. And do you know what day of the week that fell on? A. It fell on Saturday.

Q. Now, do you recall the remains of your grandfather or your step-grandfather being brought from California to Kansas City? A. No, sir.

Q. You do not know of your own knowledge when they arrived? A. No, sir. [59]

Q. How were you notified that the funeral was to take place on Saturday, January 19th?

A. I don't recall.

Q. Do you recall how you traveled in proceeding from your home to the place of the funeral?

A. No, sir.

Q. Well, you did not have an automobile?

A. No, sir.

Q. Did you ride a bicycle?

A. I don't think I rode a bicycle; no sir.

Q. Did you ride a streetcar?

A. I couldn't say as to that, whether I rode a streetcar or not.

Q. Did you walk?

(Testimony of Lester W. Hurley.)

A. I don't believe I walked over there; no, sir.
Mr. Wynn: I did not hear the answer.

A. I don't believe I walked over there; no sir.
Mr. McCormick: Speak up a little louder, if you will, please, Mr. Hurley. It will make it easier for everyone.

Q. (By Mr. Wynn): Now do you have any recollection at all as to how you went to the funeral?

A. No, I don't; no, sir.

Q. Do you know what time you arrived at the undertaking establishment? A. No, sir. [60]

Q. Do you have any recollection at all whether you waited before the funeral commenced?

A. No, sir.

Q. Do you have any recollection as to whether you first proceeded to the home of your uncle?

A. No, sir.

Q. Do you have any recollection as to whether you proceeded to the funeral in the company of your grandmother, Mrs. Price? A. No, sir.

Q. No recollection whatever? A. No, sir.

Q. The only thing you recall is that in some manner you proceeded from your home to the undertaking establishment; you don't think you walked; you did not have an automobile; but in some manner you got there. You do not know whether you went first to your uncle's home and met your grandmother—I will withdraw that question. It is becoming compound, if your Honor please.

Now, directing your attention to that date, that

(Testimony of Lester W. Hurley.)

is, Saturday, January 19th, do you recall whether or not you worked on that day?

A. I did not work in the afternoon; no, sir.

Q. But you worked Saturday morning?

A. Yes, sir. [61]

Q. Where was your place of employment with relation to your home or residence?

A. I would say a distance of approximately a mile and a half.

Q. Do you recall how you traveled from your place of employment to your home on that day?

A. I most generally walked back and forth to work.

The Court: The question is: On that day.

The Witness: Well, I don't remember. No, sir, your Honor.

Q. (By Mr. Wynn): Do you recall whether after leaving your place of employment you went home and changed your clothes before going to the funeral?

A. Well, it would be customary, I imagine; yes, sir.

The Court: The questions is: Do you remember?

The Witness: No, I don't remember. No, sir.

Q. (By Mr. Wynn): Do you remember the date preceding the funeral what your movements were on that day?

A. No, sir.

Q. Do you recall now whether or not you worked on the preceding day, which was Friday, January 18th?

(Testimony of Lester W. Hurley.)

A. Well, the only thing is that, since this case was started I have had occasion to look at the time records and they show I worked that day. That is the only thing I can give you.

Q. You have no independent recollection, have you? [62]

A. No, I haven't; no, sir.

Q. Where was the interment of your grandfather's remains?

A. Mount Washington Cemetery, Kansas City.

Q. And did you proceed to that point?

A. Yes, sir.

Q. In whose company, if anyone's?

A. Well, we went with the pallbearers. I don't recall right now offhand who they all were, but we were all together.

Q. Where was your grandmother staying during this period, that is, over the time of the funeral?

A. During the time of the funeral I don't know.

Q. Isn't it a fact that she was staying with her son, George Burton?

A. I don't know as to that; no, sir.

Q. Do you recall whether you saw her any time from the date of her return from California with the remains to the time of the funeral?

A. I can't recall it now; no, sir.

Q. No recollection whatever?

A. No, sir.

Q. Do you recall whether you visited her after the funeral on January 19th?

A. I have no independent recollection of it; no, sir.

(Testimony of Lester W. Hurley.)

Q. Do you recall the next time you visited [63] her?
A. No, I don't.

Q. Do you now recall whether you saw her at any time between her return from California and the date of the funeral?
A. No, sir.

Q. Now, prior to the date of the funeral and her return from California, that is, your grandmother, Mrs. Price, when had you last seen her?

A. In 1922.

Q. So that from 1922 until 1929 you had not seen her?

A. To the best of my recollection now, I had not; no, sir.

Q. Did you maintain correspondence with her?

A. I corresponded occasionally with her; yes, sir.

Q. By "occasionally" what do you mean, how many times a year?
A. Possibly two or three.

Q. Now, you visited your grandmother and her husband, Mr. Price, here in Los Angeles in 1921, 1922, and 1923, is that correct?

A. 1920, 1921, and 1922.

Q. I am corrected. How long did you stay on each visit?

A. I would say approximately a month.

Q. Where did you first meet Mr. Price?

A. In Excelsior Springs, Missouri.

Q. And during what year? [64]

A. Well, I was rather small when we first went up there, my mother and I.

(Testimony of Lester W. Hurley.)

Q. You went then on one occasion or more?

A. On several.

Q. How long would you stay on these visits?

A. Well, I don't recall now how long we stayed.

Q. Well, was it a matter of a day or two, or was it a matter of a week or a month?

A. I can't recall how long we stayed.

Q. Do you now recall that you did not stay as long as a month?

A. I can't recall how long we stayed.

Q. Do you know what time of the year you would make these visits?

A. No, sir.

Q. Do you know whether you would go in summer vacation from school or during the school year?

A. No, sir.

Q. You have no recollection of that?

A. No, sir.

Q. You testified that Mr. Price and Mrs. Price came to California in 1917?

A. Somewhere along thereabouts; yes, sir.

Q. So from 1917 until your visit in 1920 you had not seen Mr. Price? [65]

A. That is correct.

Q. Had you corresponded with him during that period?

A. Just a moment. I recall one time he came back to Kansas City and I saw him then in the intervening time.

Q. When was that?

A. Between the period you mentioned there, 1917 to 1919 or to 1920.

(Testimony of Lester W. Hurley.)

Mr. Wynn: I think, if the court please, I had a question pending that has not been answered.

The Court: Would you read it, Mr. Reporter?

(Pending question read by the reporter as follows: "Q. Had you corresponded with him during that period?")

A. No, sir.

Q. Had he ever corresponded with you?

A. No, sir.

Q. So Mr. Price never told you that he was going to give you any stock in the Edison Company, did he?

A. No, sir.

Q. On your visits in California in 1920, 1921, 1922 you were accompanied by your mother?

A. That is right.

Q. And where did you stay during your visit here?

A. At their home.

Q. Approximately how long did you stay? [66]

A. Well, I don't know as to that. I would say approximately a month each time.

Q. When would those visits occur?

A. In the summer.

Q. On the occasion of those visits did Mr. Price ever tell you that he was going to see that you got some stock in the Edison Company?

A. No, sir.

Q. He never said a word to you about that?

A. No, sir.

Q. During the fall, that is, the last three months

(Testimony of Lester W. Hurley.)

of 1928 and the early months of 1929, just where was your place of employment?

A. Missouri Pacific Railroad, East Bottoms Shops, Kansas City.

Q. Did your duties require you to serve at any other locations? A. Not at that time, no, sir.

Q. Now, did you work different shifts there?

A. No, sir.

Q. What shift did you work?

A. From 8:00 to 4:30, 8:00 a.m. to 4:30 p.m.

Q. How many days a week?

A. Six days a week.

Q. Which days did you have off? [67]

A. I had a half day off on Saturday and Sunday.

Q. All day Sunday? A. Yes, sir.

Q. So you worked five and a half days?

A. That is right.

Q. Saturday afternoon and Sunday off?

A. That is right.

Q. And your place of employment was, roughly, seven or eight miles from the Union Station in Kansas City, Missouri?

A. Approximately, yes, sir.

Q. Where was your uncle employed during that period of time I have just mentioned?

A. Well, it is my best belief he was working in the information bureau there at the Union Station.

Q. And you were working seven or eight miles away? A. Yes, sir; that is right.

Q. Now, you last lived with your uncle when—in 1924, was it?

(Testimony of Lester W. Hurley.)

A. In the early part of 1925.

Q. 1925. After that date and, say, the first of 1929, did you correspond with him?

A. No, sir.

Q. Between 1929 and March 18th of 1944 did you correspond with him?

A. I had correspondence with him in that period; yes, sir. [68]

Q. And now, what was that, a social correspondence?

A. No, sir. It was when I was working in St. Louis I received, I think, a couple of letters from him.

Q. Do you recall now what the subject of the letters was?

A. Well, it was after my grandmother's death. It was in connection with the transfer of the stock.

Q. So that from the time you resided with him up until your grandmother's death or shortly after that you had no correspondence with him?

A. No, sir; that is right.

Q. And he had written no letters to you?

A. No, sir; none that I know of.

The Court: Were you both employed by the same railroad?

The Witness: No, sir. He worked for the Kansas Terminal Railway and I worked for the Missouri Pacific Railroad.

Q. (By Mr. Wynn): Nevertheless, you are familiar with his handwriting?

A. Fairly well so; yes, sir.

(Testimony of Lester W. Hurley.)

Q. But you do not base that familiarity on any correspondence you had with him over a period of 19 years? A. No, sir.

Q. On what do you base that familiarity?

A. Well, comparing the signatures there on that document [69] that is purported to be his signature, that is what I judge to be his signature.

Q. Now, just what document are you referring to?

A. Well, the ones that were presented to me.

Q. You have before you Plaintiff's 1 through 7 which purport to bear signatures of George Burton?

A. That is right.

Q. What did you compare that signature to when you came to the conclusion that that was the actual signature of your uncle?

A. All I was doing was testifying that he has admitted that it was his signature, and I have stated that that was his signature.

Q. But you did not compare that with any handwriting you had? A. No, sir.

Q. Of George E. Burton? A. No, sir.

Q. Now, the same is true as to the second signature of your grandmother, "Elizabeth J. Price," is it not?

A. Well, I am fairly well acquainted with her signature.

Q. But you testified that your correspondence with her was very casual over this period of time, isn't that correct?

A. That is right; yes, sir.

(Testimony of Lester W. Hurley.)

Q. And when you first examined the photostatic copies [70] of the documents you now have before you and came to the conclusion that your signature or that the signature "Lester Hurley" appearing thereon was not your own did you at that time come to any conclusion as to the validity or authenticity of the signatures of George Burton or Elizabeth Price?

The Witness: I didn't quite get that, sir.

The Court: I suggest you rephrase it.

Mr. Wynn: I withdraw the question at the court's suggestion.

Q. At the time you first examined the photostatic copies of the documents you now have before you, Plaintiff's 1 through 7, you did not have any signatures of Mrs. Elizabeth J. Price which you knew to be genuine? A. Yes, sir; I did.

Q. Now, where did you obtain such signatures?

A. Well, I had a letter at home that I had that had her handwriting on it, and I believe I had Christmas cards, something like that.

Q. Yes. As to George Burton did you have any data available before you?

A. Well, he had written me in St. Louis after my grandmother died.

Q. Yes, in 1943 or 1944?

A. That is right.

Q. And the documents before you now purport to have been [71] executed in 1929, some 15 years before? A. Yes, sir.

(Testimony of Lester W. Hurley.)

The Court: Those were the first seven exhibits, Exhibits 1 to 7?

Mr. Wynn: Exhibits 1 to 7. I appreciate the court's suggestion.

The Witness: Well, there is no date on here.

Mr. McCormick: Just a moment. I am sure that counsel is not desirous of misleading the witness, but the time when the examination of these documents or photostatic copies, as the witness has testified to, occurred in 1944. And the letters——

The Court: The question now is as to when those signatures were made, is the question as I understand it.

Mr. McCormick: I did not so understand the question.

Mr. Wynn: Yes, that is it. I mean you will stipulate, will you not, that these documents were executed, purported to be executed sometime in February of 1929

Mr. McCormick: That is correct. But I understood you were asking Mr. Hurley as to whether or not he had a letter or any correspondence with Mr. Burton available in 1944 which would be a basis of comparison.

Mr. Wynn: He testified that he had received a letter from his uncle shortly after the mother's death, which was in December of 1943, and that he had that letter available to [72] conclude as to the validity of the signature of George Burton.

Mr. McCormick: That is right.

(Testimony of Lester W. Hurley.)

The Court: The Pre-Trial Stipulation, gentlemen, shows that the dividend orders were at least submitted to the defendant in November of 1928 and the assignment of the certificate was submitted to the defendant in January, 1929; so I think it is clear the writing on them must have been made prior to that time.

Q. (By Mr. Wynn): I hand you now Plaintiff's Exhibit No. 10 which has been previously called to your attention. As I understand your testimony, the handwriting on this document appearing in the upper half thereof, consisting of the name of "Mrs. Elizabeth J. Price" on one line and thereunder, on two lines "Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley" was, in your opinion, the handwriting of your grandmother?

A. The two "Elizabeth Prices" there, in my opinion, was my grandmother's.

Q. Now, do you have any opinion as to whose handwriting the remaining writing on those three lines referred to is?

A. No, sir.

Q. No opinion?

A. No, sir.

Q. I show you Plaintiff's Exhibit 13, Dividend Order 12743, and directing your attention to the same three lines [73] referred to previously, as I understand your testimony, that handwriting is the handwriting of your grandmother?

A. Yes, sir. The two "Elizabeths," that is, the two "Elizabeth Prices" on that document.

Q. But not the remaining portion of that?

A. No, sir; this part in here.

(Testimony of Lester W. Hurley.)

Q. Yes. So the record may be clear, then, as to Plaintiff's Exhibit 13, in your opinion the words "and George E. Burton and Lester Hurley" is not in the handwriting of your grandmother?

A. That is right.

Q. And on Plaintiff's 10?

The Court: Your answer?

The Witness: I said that was correct, yes, your Honor.

Q. (By Mr. Wynn): And on Plaintiff's 10, your testimony is that the words "and George E. Burton and Lester Hurley" is not in the handwriting of your grandmother?

A. That is correct; yes, sir.

Q. And you are basing that opinion on the familiarity you had with the handwriting of your grandmother by correspondence over the years from 1917 or '18 until the day of her death?

A. That is right; yes, sir.

Q. How much of that correspondence did you have in your possession at the date [74] of her death?

A. Well, one letter that I know of.

Q. And that was written when? A. 1941.

Q. Do you have that letter in your possession now?

A. I don't have it in my possession; no, sir.

Q. In the possession of your counsel?

A. I think so; yes, sir.

Q. You testified in your direct examination that your grandmother at one time told you that upon

(Testimony of Lester W. Hurley.)

her death you might acquire some stock in the Edison Company, is that correct?

A. I might obtain—she said she had some interest in the company that I might benefit by.

Q. Where did that conversation take place?

A. As I recall, it was over in Kansas City, Kansas, at her home at 428 North 18th Street.

Q. At whose home?

A. At her home, 428 North 18th Street.

Q. And approximately when was that conversation?

A. Well, I couldn't say when it was.

Q. Well, was it a month or two before her death or——

A. No. She was in the hospital at the time she died.

Q. All right.

A. It was while she lived at 428 North 18th Street.

Q. Well, when did she live at 428 North 18th?

A. I would say for a period from the time she went to [75] the hospital, which was two years prior to her death. About, I would say, six or seven years she lived at that address.

Q. Say she died in 1943, it was from 1941 six or seven years before that?

A. That is right.

Q. Can you fix it in that six or seven year period any more accurately?

A. No, I can't.

Q. In other words, you do not know whether it was in 1941 or 1934?

A. No, sir.

(Testimony of Lester W. Hurley.)

Q. Any time in that period? A. No, sir.

Q. Was anyone present during that conversation? A. Not that I recall; no, sir.

Q. What was the occasion of your visit with her at that time?

A. I visited her frequently when she lived there.

Q. So this was just a casual visit?

A. I dropped in; yes, sir.

Q. But nobody went with you?

A. No, sir.

Q. No one was present?

A. No, sir, that I recall.

Q. The occasion that you are now relating is the [76] first occasion that you can recall when she told you about any stock in the Edison Company?

A. She said she had some interest in stock that I might benefit by.

Mr. Wynn: I object to the answer as not responsive to the question, if the court please.

Mr. Gunter: He told what she said.

The Court: Do you wish it stricken?

Mr. Wynn: Yes, if the court please, for the purposes of the objection.

The Court: The answer may go out. Please read the question, Mr. Reporter.

(Question read by the reporter.)

A. Well, I can't answer one way or the other, your Honor. If I say "no" it would be misleading, and if I say "yes" it would be misleading.

The Court: Do you mean it assumes a fact not in evidence, that she told you about stock?

(Testimony of Lester W. Hurley.)

The Witness: Yes, sir; that is correct.

The Court: Well, you may answer it and explain your answer, the first occasion she mentioned to you that you might get something.

The Witness: That I might benefit from some interest she had.

The Court: Is that your question? [77]

Mr. Wynn: Yes. And the answer is, that was the first occasion?

A. She said that she had some interest in some stock that I might benefit from.

Q. She had not said anything to you before that time? A. No, sir.

Q. And that time may have been any time between 1934 and 1941? A. Yes, sir.

Q. And that is the only occasion?

A. Yes, sir.

The Court: Did she mention what kind of stock?

The Witness: Not that I recall, your Honor. She said she had some interest that I might benefit from it.

The Court: Did she mention the company?

The Witness: No, not that I recall, your Honor.

The Court: We might take the afternoon recess at this time of five minutes.

(Short recess.)

Mr. Wynn: Shall I proceed?

The Court: Yes.

Q. (By Mr. Wynn): Mr. Hurley, during the lifetime of your grandmother on occasion you signed

(Testimony of Lester W. Hurley.)

certain proxies covering stock in the Edison Company, did you not?

A. I signed by proxy; yes, sir. [78]

Q. On how many occasions did you sign proxies?

A. I might have signed one on one occasion, I believe.

Q. Do you recall when that occasion was?

A. Approximately in 1941, I believe.

Q. When you answer you possibly might have signed one, you mean you have no recollection of signing one?

A. No, sir; no distinct recollection.

Q. Do you have any recollection of having signed a document at her request?

A. No, sir. No, sir.

Q. But you do not now recall that you never signed a document at her request, do you?

A. I never signed a document at her request; no, sir, only the proxy, and possibly might have signed a proxy.

Q. Now, you are not clear on that at the present time?

A. I had a request to sign a proxy from her.

Q. How was that request made?

A. In writing.

Q. From your grandmother? A. Yes, sir.

Q. In the year 1941? A. Yes, sir.

Q. Did you preserve that request?

A. Yes, sir.

Q. Do you still have it? [79]

(Testimony of Lester W. Hurley.)

A. Yes, sir. My attorneys have it, I believe.

Q. In court? A. Yes, sir.

Mr. Wynn: Mr. McCormick, do you have that?

Mr. McCormick: Yes. I will find it for you.

Mr. Wynn: I will hand to the clerk and ask to have marked for identification a letter dated February 17, 1941, signed "Grandmother Price," together with an envelope which accompanies the letter, the postmark having been torn off the envelope.

The Clerk: That will be Defendant's A for identification.

Q. (By Mr. Wynn): Now, is it your testimony that on no other occasion did you receive a proxy from your grandmother with the request that you sign same? A. No, sir.

Q. You are now positive of that?

A. Yes, sir.

Q. Never on any other occasion?

A. No, sir.

Q. Do you recall whether or not you signed the proxy which was delivered to you by your grandmother?

A. I can't say to that; no, sir.

Q. I hand you Defendant's Exhibit A for identification, purporting to be a letter dated February 17, 1941, signed "Grandmother Price" and an envelope addressed to "Mr. Lester Hurley, 554 Stonewall Court, Kansas City, Mo." and ask you if [80] you received that letter? A. Yes, sir.

(Testimony of Lester W. Hurley.)

Q. Do you recognize the handwriting thereon?

A. Yes, sir.

Q. Is it the handwriting of your grandmother?

A. It is; yes, sir.

Mr. Wynn: We offer this into evidence.

Mr. McCormick: No objection.

The Court: Defendant's Exhibit A for identification is received into evidence.

February 17/41

Dear Grandson, I have
the Proxy for you to
sign can you come over
and sign as I want to return
it to Edison as soon as
possible

Grandmother
Price.

Left to
get a paper
for you.

Feb 18 1941

24th



Mr. Leslie H. H. H.
55 1/2 Stone Mountain
Kansas City

No

Received Nov 1, 1941.

(Testimony of Lester W. Hurley.)

Q. (By Mr. Wynn): I will show you a transcript of your testimony. As I have advised your counsel, I am calling your attention to page 17 of a transcript of your testimony in the case of Burton vs. Hurley in the District Court for Kansas, and ask that you read the portion thereof beginning with the question: "Did you have any request from her to sign a proxy?" on page 11 through your answer on the same page: "I did, yes, sir." Will you please read that?

A. Yes, sir.

Q. Now, the portion I have shown to the witness reads:

"Q. Did you ever have any request from her to sign a proxy? A. Yes, sir.

"The Court: Who would make that request, she in person or someone else? [81]

"A. She would, yes, sir.

"Q. (By Mr. McCormick): Any of those instruments of that character that you signed did you rely upon your grandmother as to the nature of the instrument that was presented to you? A. I did, yes, sir."

Did you so testify?

A. That is correct.

Q. Now, when your counsel referred to instruments at that time, you realized that he was referring to more than one instrument, did you not?

A. I understand so; yes, sir.

(Testimony of Lester W. Hurley.)

Q. By your answer did you mean to imply that you signed more than one instrument?

A. No, sir.

Q. How do you explain that testimony?

A. Well, I don't have any recollection of it, only the correspondence that I have of my grandmother requesting that I sign the proxy.

Q. So that you may very well have signed more than one instrument?

A. I don't think so; no, sir.

Q. But you have just testified that you have no recollection of it?

A. No, no direct recollection of it; no, sir. [82]

Q. So you do not recall whether you did or did not, at the present time?

A. I don't recall that I signed that one, either, no, sir.

Q. At the present time? A. No, sir.

Q. Did you have any more vivid recollection at the time of the trial of the case in *Burton vs. Hurley* in Kansas? A. No, sir.

Mr. Wynn: May I interrupt and ask the court if the court has any objection to me reading these direct to the witness, rather than showing it to him each time? It will save time.

The Court: Has he seen the document?

Mr. Wynn: This is the transcript. I am going to ask him if he so testified. Do you have any objection?

Mr. McCormick: I have no objection to that, your Honor, if it is satisfactory to the court.

(Testimony of Lester W. Hurley.)

Mr. Wynn: It will save time.

The Court: Very well.

Mr. Wynn: I am now reading from page 30 of the transcript of your testimony in the case of Burton vs. Hurley in the District Court of Kansas.

“Q. Do you have any recollection of ever having signed any dividend order or anything similar to that instrument having to do with stock of the Southern [83] California Edison Company?

“A. The only thing is a proxy that I have already testified to.”

Did you so testify?

A. Yes, sir.

Q. Then,

“Q. When was the first time that you signed a proxy? A. I don't recall that, either.”

Did you so testify?

A. Yes, sir.

“Q. Do you recall about when it was?

“A. No, sir. No, I don't.”

Did you so testify?

A. Yes, sir.

“Q. Was it before or after your grandfather's death?

“A. I recall that I signed some of them after my grandfather's death. I would say seven or eight years ago.”

Did you so testify?

A. Yes, sir.

(Testimony of Lester W. Hurley.)

Q. Now, do you want to modify your testimony in the cause now pending before this court in that respect?

A. Well, the only thing is that I didn't have that [84] before me there as to the date. I didn't know the actual time it was that she made a request that I sign a proxy.

Q. Yet you did testify in this preceding action that you signed some of them before your grandfather's death, some seven or eight years before?

A. As I recall it, it was in that letter there which was after my grandfather's death; yes, sir.

Q. And you are now testifying that you do not recall that you ever signed any of them?

A. Well, it was the request that I had made upon me to sign it. I don't recall that I did sign it.

Q. Did you know seven or eight years prior to January of 1945 what a proxy was?

A. No, sir.

Q. But you did testify that seven or eight years before that date you did sign a proxy?

A. Well, it was requested.

Q. Now you do not know whether it was a proxy that you signed or not, do you?

A. Well, the request I had was for a proxy.

Q. The request that you are referring to was 1941?

A. Yes, sir; that is right.

Q. But your testimony in the preceding case was that seven or eight years before 1941 you signed proxies?

(Testimony of Lester W. Hurley.)

A. As I stated, I didn't have the letter before me and [85] I was a little vague on the date as to when the request was made.

Q. You received that letter prior to giving your testimony in the case of Burton vs. Hurley, did you not? A. That is right.

Q. Where was the letter during the trial of the case of Burton vs. Hurley?

A. It was introduced in the trial, I believe. Wasn't it, Mr. McCormick?

Mr. McCormick: Yes, it was introduced.

Q. (By Mr. Wynn): So it was in evidence in that case?

A. I didn't have it before me. I was not concerned exactly on what date the letter was dated.

Q. So when you gave your testimony here that seven or eight years before, you had signed some of them—referring to proxies—you did not know whether you did or not; is that your testimony?

A. I say it was around 1941, now, that I made the statement that I had a request to sign the proxy.

Q. Yet the matter was just as vivid in your recollection during 1945, during the time of that trial, as it is now?

A. Well, as I say, I didn't have the letter before me then.

Q. Then, Mr. Hurley, do you want to say that you were [86] mistaken when you testified in the case of Burton versus Hurley that you signed the proxies seven or eight years before that date?

A. I want to state that I had the request of

(Testimony of Lester W. Hurley.)

1941, the one I had in my mind. That is the one I was going on.

Q. And you could not recall at that time, in 1945, whether this occurrence was in 1941 or clear back in 1938?

A. As I stated, I didn't have the letter before me and I was vague as to the date.

Q. Do you recall how you affixed your signature to any proxy that you signed?

A. I say, I don't recall that I signed one. I had a request to sign one.

Q. Do you recall whether the instrument that came to you in this letter of February 17, 1941, referred to any stock?

Mr. McCormick: Just a moment. I object to that, as the instrument speaks for itself and it does not indicate that there was any instrument came to him in connection with that.

The Court: You are referring to Defendant's Exhibit A?

Mr. Wynn: What did I say?

Mr. McCormick: Well, I understood you to say as to whether or not the instrument referred to any stock.

Mr. Wynn: Yes. The objection may be sustained. I will rephrase my question.

Q. Do you recall having gone to your grandmother's [87] house to sign any instrument after receiving this letter of February 17, 1941?

A. No, sir.

Q. Where did she live at the time?

(Testimony of Lester W. Hurley.)

A. I believe her address is on the envelope, 428 North 18th, if I am not mistaken.

Q. Yet didn't you testify a few moments ago that you visited that address and talked to her there about an interest in stock in the Edison Company?

A. She said she had interest in some kind of stock.

Q. And she mentioned the Edison Company, did she not?

A. Not that I recall; no, sir.

Q. You mean you do not recall that now?

A. I do not recall it; no, sir.

Q. When you had this conversation with her concerning her interest in stock which might sometime benefit you did she tell you how much stock she had?

A. No, sir.

Q. Did she tell you when she got the stock?

A. No, sir.

Q. Did she tell you what dividends she got on it?

A. No, sir.

Q. Did she tell you whether or not the dividends on that stock was her only source of income?

A. No, sir. [88]

Q. Did she tell you whether she had any other property?

A. No, sir.

Q. Real estate?

A. No, sir.

Q. Personal property?

A. No, sir.

Q. Or anything else?

A. No, sir.

Q. Did she tell you whether she had any income at all?

A. No, sir.

Q. Did she tell you whether she held any mortgages?

A. No, sir.

(Testimony of Lester W. Hurley.)

Q. Mortgages from any of her relatives or her son, George Burton? A. No, sir.

Q. How old were you at that time?

A. In 1941? 1941?

Q. At that time.

Mr. McCormick: Just a minute. I think that it should be fixed with some definite certainty as to what time you are referring to.

Mr. Wynn: My question referred to the previous questions, when they were discussing this in 1941 at her residence in Kansas City, but I will supplement the question by adding "in 1941." [89]

A. Five years ago I was 32.

Q. Did she tell you where she kept her stock?

A. No, sir.

Q. Or her interests in the Edison Company?

A. No, sir.

Q. Or her interest in any stock?

A. No, sir.

Q. So the only thing she told you at that time was, she had some interest in some stock which sometime might benefit you? A. Yes, sir.

Q. No other discussion whatever concerning her financial condition? A. No, sir.

Q. And that was the only occasion that she ever did discuss with you her financial or property situation? A. Yes, sir.

Q. I think you have before you, do you not, Plaintiff's Exhibit No. 10, which is Dividend Order No. 12742? A. Yes, sir.

Q. When did you first see that document?

(Testimony of Lester W. Hurley.)

A. I would say approximately two weeks before the preceding trial.

The Court: That is the Kansas trial?

The Witness: Yes, your Honor. [90]

Q. (By Mr. Wynn): Prior to that time had you seen a photostatic copy of the document?

A. I had.

Q. And when had you seen that?

A. Oh, several days previous to that.

Q. Where did you see that photostatic copy?

A. In my attorney's office.

Q. You formed an opinion as to whether or not the purported signature thereon "Lester Hurley" was or was not your signature prior to the last trial, did you not? A. Yes, sir.

Q. And when did you form that opinion?

A. As soon as I saw the document.

Q. When you saw the original document?

A. The photostatic copy.

Q. You formed your opinion then?

A. Yes, sir.

Q. And after seeing the original document you did not change that opinion at all?

A. No, sir.

Q. But you are satisfied that the first time you saw the original was, roughly, two weeks before the trial? A. That is right.

Q. Which began in January of 1945?

A. That is correct. [91]

Q. Reading from your reported testimony in the

(Testimony of Lester W. Hurley.)

case of Burton versus Hurley, page 30 thereof—let me withdraw that question and reframe it so as to properly identify the instrument.

Reading, first, from page 24:

“I hand you plaintiff’s exhibit 8, dividend order bearing the signature, among others, of ‘Lester W. Hurley,’ the ‘Hurleey’ spelled, as you see, with two ‘e’s.’ Do you say that that signature ‘Lester W. Hurleey’ appearing immediately above the address ‘5716 Scarritt’ is not your signature?”

“A. In my opinion it is not my signature. You said ‘Lester W.’ It is ‘Lester Hurleey.’ ”
Did you so testify?

A. Yes, sir.

Q. Reading now from page 30, the same transcript:

“Q. Handing you again Plaintiff’s Exhibit 8, I will ask you whether at any time since the filing of this lawsuit or at any other time you have studied that so you know what it is?”

“A. Since the filing of the lawsuit, yes, sir.”
Did you so testify?

A. Yes, sir.

Q. Continuing: [92]

“Q. When was the first time that you saw that?”

“A. I saw a photostatic copy of it sometime along in March.”

Did you so testify?

A. Yes, sir.

(Testimony of Lester W. Hurley.)

“Q. Of what year? 1944?”

“A. Yes, sir.”

You so testified?

A. Yes, sir.

“Q. When was the first time that you saw this instrument itself?”

“A. The original instrument, I would say approximately two or three years ago.”

Now, did you so testify?

A. I believe there was an error there, sir. I think my answer to that question was “two or three weeks ago.” It was evidently an error in the transcription of it.

Q. So that if you did so testify, it was erroneous? A. That is right.

Q. And you had never seen that prior to two or three weeks before?

A. No, sir. I had seen the photostat first and this afterwards; so it couldn't have been previous to this date.

Q. Now, you testified at that time in the trial of the preceding action that, in your opinion, was not your signature, [93] while you testified to the court on your direct examination that it was not your signature? A. Yes, sir.

Q. Are you more positive at the present time than you were during the trial of the prior action?

A. No, sir.

Q. So when you testified in the prior action that it was your opinion that it was not, you meant that you were positive that it was not?

(Testimony of Lester W. Hurley.)

A. I was positive, yes.

Q. That there was no question whatever in your mind? A. That is correct.

Q. I call your attention to Plaintiff's Exhibit No. 11, a document purporting to be signed by you in two places and witnessed by "Helen Burton and Paul H. Ditzen." Who prepared that instrument?

A. As I recall, it was prepared by the chief clerk in the office, in my office.

Q. And that was in the year 1931?

A. Yes, sir.

Q. You distinctly recall having signed that instrument? A. Yes, sir; that is right.

Q. What was the occasion of Helen Burton signing the same as a witness? [94]

A. She was a stenographer in the office of an attorney there in Kansas City, Kansas, Paul H. Ditzen, who was an attorney, and he notarized the signature on this.

Q. So she signed that at your request?

A. Yes, sir.

Q. And she was approximately what age at the time?

A. Well, I would say 17 or 18, somewhere along in there.

Q. You distinctly recall the occasion of the execution of that document in 1931?

A. Yes, sir. [95]

* * *

(Testimony of Lester W. Hurley.)

Redirect Examination

By Mr. McCormick:

Q. Now, Mr. Hurley, in your cross-examination you are asked as to whether or not you positively testified in your former trial that Plaintiff's Exhibits 1 to 7 were not your signatures. I call your attention to page 46 of the transcript prepared in the case of Burton vs. Lester W. Hurley and the Southern California Edison Company, No. 4974, and ask you to read the portion of page 46 beginning with the question:

"Q. Mr. Hurley, I will hand you Plaintiff's Exhibit 1,"

to and including the question relative to Exhibit

7. [103] A. To here, is it?

Q. Exhibit 7, yes. A. Yes, sir.

Q. Did you so testify in that case?

A. I did; yes, sir.

"Q. Mr. Hurley, I will hand you Plaintiff's Exhibit 1 and call your attention to the signature 'Lester W. Hurley' appearing on the assignment of stock and irrevocable power of attorney and ask you whether the signature 'Lester W. Hurley' written there is your signature? A. It is not.

"Q. I hand you Plaintiff's Exhibit 2 and ask you whether the signature on the assignment of the same type, the signature 'Lester W. Hurley' is your signature? A. No.

(Testimony of Lester W. Hurley.)

“Q. I hand you Plaintiff’s Exhibit 3 and ask you whether the signature ‘Lester W. Hurley’ appearing there is your signature?

“A. It is not.

“Q. I hand you Plaintiff’s Exhibit 4 and ask you whether the signature ‘Lester W. Hurley’ appearing there is your signature?

“A. It is not. [104]

“Q. I hand you Plaintiff’s Exhibit 5 and ask you whether the signature ‘Lester W. Hurley’ appearing there is your signature?

“A. It is not.

“Q. I hand you Plaintiff’s Exhibit 6. Is the signature ‘Lester W. Hurley’ appearing on that assignment your signature? A. It is not.

“Q. I hand you Plaintiff’s Exhibit 7 and ask you whether the signature ‘Lester W. Hurley’ appearing on the instrument is your signature? A. It is not.”

The Court: Is it stipulated, gentlemen, that the Exhibits 1 to 7 as identified in the Kansas action comprise the same documents as Exhibits 1 to 7 here?

Mr. Wynn: I will so stipulate.

Mr. McCormick: Yes, your Honor. [105]

* * *

Wednesday, November 13, 1946, 2:00 P.M.

Mr. Wynn: Defendant calls Mr. Jones. Take the stand, Mr. Jones, and be sworn by the clerk.

ROBERT N. JONES

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Robert N. Jones.

Direct Examination

By Mr. Wynn:

In connection with the testimony of this witness, if the court please, I wish to state that I am calling him out of order, in that I normally would not present this witness at this time at the opening of my case. However, he is here from the Middle West and has made reservations to return there on the train tonight, and I would like to elicit his testimony now.

Q. What is your full name, Mr. Jones?

A. Robert Neil Jones.

Q. Where do you reside?

A. Kansas City, Missouri.

Q. How long have you resided in Kansas City, Missouri? [2*]

A. About 20 years.

Q. What is your present business or occupation?

A. At the time, I am unemployed, through physical condition.

(Testimony of Robert N. Jones.)

Q. Were you employed in the year 1928?

A. Yes.

Q. What was your employment at that time?

A. I was employed by the Kansas City Terminal in the passenger service.

Q. Is that in Kansas City, Missouri, or Kansas City, Kansas? A. It is Kansas City, Missouri.

Q. And where is it located?

A. At the Union Station, about 24th and Pershing Road, or 24th and Main Street.

Q. Over what period of time were you employed there?

A. I was employed from 1921 until 1927. I had a leave of absence and went back in '27 and was there until 1931, until February.

Q. In what capacity were you employed?

A. I was employed first as an usher and then as a gate man.

Q. When did your employment as gate man begin?

A. My employment as gate man began in 1928, about February. [3]

Q. Now, can you describe what your duties were as gate man?

A. I was loading departing trains, taking care of passengers, inspecting tickets to see if they were on the right trains. At that time we had to give our punch system on each ticket to signify that the passenger was going to the right train.

Q. Where in the station did you carry out such duties?

(Testimony of Robert N. Jones.)

A. Through the main waiting room, from Gate No. 1 through the Gate 16.

Q. Where did you reside in 1928?

A. At 3829 Garfield.

Q. In what city?

A. Kansas City, Missouri. Pardon me.

Q. Are you acquainted with a Mr. George Burton?

A. Yes, sir.

Q. Is he in the court room?

A. Yes, sir.

Q. Sitting on my left at the counsel table between the two gentlemen?

A. Yes, sir.

Q. How long have you known Mr. Burton?

A. I have known Mr. Burton since 1921.

Q. How did you first become acquainted with him? [4]

A. We were employed by the same company. Mr. Burton was employed in the capacity of information clerk when I was first employed as an usher before taking this gate job.

Q. Where did Mr. Burton perform his duties?

A. In the information booth in the center of the main lobby in what is known as the west end.

Q. Of the Union Station?

A. Of the Union Station.

Q. To your knowledge, was he employed at that situation and in that position in the year 1928?

A. Yes, sir.

Q. What were your hours of employment?

A. From 3:30 p.m. until midnight.

Q. Did you ever vary from that shift?

(Testimony of Robert N. Jones.)

A. No, sir, not in the last four years that I was with the company, that was my regular hours.

Q. Did you have a day off?

A. I had Sundays off.

Q. What were Mr. Burton's hours of employment, if you know?

A. Mr. Burton worked an alternating shift, I believe, that changed every two weeks. In fact, I know it did. He worked four to midnight, or 3:30 to midnight, with 30 minutes for lunch period, and for the next two weeks he was from, I [5] believe, 7:00 until 3:00, or 7:00 until 3:30.

Q. I hand you now a document, Mr. Jones, marked Plaintiff's Exhibit 13 in this action, and ask you to inspect the document. Do you find a signature thereon purporting to be your signature "R. N. Jones"?

A. Yes, sir.

Q. Is that your signature?

A. It is.

Q. Below the signature appears to be an address in writing consisting of figures and words. Is that address in your writing?

A. It is.

Q. Will you please describe to the court the circumstances surrounding your affixing your name and address to that document?

A. Well, at this particular time, I made inquiries on Door A, which was announcing arriving trains between the hour——

Mr. McCormick: Just a moment, if the court please. I object to the question or the answer unless he indicates as to what particular time he is speaking about.

(Testimony of Robert N. Jones.)

Mr. Wynn: Yes. I will stipulate that the question may be withdrawn, and substitute this question:

Q. Do you recall approximately when you affixed your signature to that document? [6]

A. Yes, sir.

Q. Approximately when?

A. Between the hour of 6:30 and 7:00 o'clock, p.m.

Q. Do you recall the year?

A. Well, no, sir; not——

Q. Do you recall the month of the year?

A. I do not. The only thing that would cause me to remember—not definitely—would be late in season, due to the fact that we were in full uniform, wearing our coats, and the building was heated. So it would be in the late fall or early winter.

Q. Do you recall the day of the week?

A. No, sir.

Q. Now will you describe to the court the circumstances surrounding the affixing of your signature and the address to that document?

A. Mr. Burton called me over from my post, which was a short distance from Door A to the information booths.

Q. How far was it?

A. I would say 20 to 25 feet.

Q. You may continue.

A. Yes, sir. And asked me to witness a signature.

(Testimony of Robert N. Jones.)

Q. Was there anyone else at the information booth at the time? [7]

A. Mr. Burton was—as I recall it, I don't know whether his associate in that booth was out to lunch or not. But I was introduced to a gentleman by the name of Lester Hurley and was asked to witness a signature on this document on which my name appears.

Q. Can you now recognize that person introduced to you as Lester Hurley? A. No, sir.

Q. He is in the court room at the present time. You cannot recognize him?

A. No, sir; I can't.

Q. Now, did the person so introduced to you sign the document before you did?

A. Yes, sir.

Q. Do you know in relation to the signature he affixed to the document where your signature appeared?

A. Would you state that again, please?

Mr. Wynn: Mr. Reporter, will you please read it?

(Question read by the reporter.)

A. I don't think I understand.

The Court: The witness does not understand the question. I suggest you rephrase it.

Q. (By Mr. Wynn): At the court's suggestion, I will rephrase the question. Do you now recall whether you signed your signature both below and/or to the side of the signature [8] there affixed in your presence?

(Testimony of Robert N. Jones.)

A. I signed, affixed my signature below, below and to the side, as this document shows, this instrument.

The Court: The witness refers to Plaintiff's Exhibit 13, is that correct?

The Witness: Below and to the left; yes, sir.

Q. (By Mr. Wynn): Did you ever meet a Lester Hurley after that date? A. No, sir.

Q. Now, was that all that transpired on that occasion?

A. Yes, sir. Immediately I went back to my post from there on. That is all I have any information of.

Q. Now, you testified that you are acquainted with Mr. George Burton here in the court room. When is the last time that you have seen him?

A. In 1931 up until yesterday.

Q. Up until the time of this trial?

A. That is right.

Mr. Wynn: You may cross-examine.

Cross-Examination

By Mr. McCormick:

Q. Mr. Jones, where do you reside at the present time?

A. 1808 East 82nd Street Terrace, Kansas City, Missouri. [9]

Q. And did I understand you to say that you are still in the employ of the railway company?

A. No, sir. I left them in 1931.

Q. And your present employment is what?

(Testimony of Robert N. Jones.)

A. I am unemployed at the present time.

Q. Unemployed. Where did you reside prior to the address which you gave as your present residence? A. 4421 Prospect.

Q. And did you reside at that address for some period of time? A. Yes, sir.

Q. How long?

A. I would say about three years.

Q. State, if you will, how many different residences or locations you have had in Kansas City over the 20 years in which you have lived in Kansas City? A. Well, I would say five.

Q. I believe you stated in your direct testimony that you had a leave of absence during the time that you were employed by the Terminal Railway Company? A. Yes, sir.

Q. Over what period of time did that leave extend?

A. That extended from July 1st of 1927 until September 21st of the same year.

Q. I believe you state, as your memory of this transaction [10] which you have related, that this occurred between 6:30 and 7:00 o'clock p.m.

A. Yes, sir.

Q. Was that in the morning or the evening?

A. That is p.m., in the evening.

Q. And what, if anything, caused you to be so certain after this length of time that this occurrence took place at that hour?

A. I made a relief at that time of the evening for the gate man who was working Door A, which

(Testimony of Robert N. Jones.)

is about 20 feet from the information booths, from arriving trains, and from 6:30 until 7:00 was his relief and I took care of that until he returned.

Q. Was that a very unusual occurrence?

A. No, that was quite frequently.

Q. If that was a frequent occurrence, what, if anything, causes you to remember now with apparent definiteness and certainty that this witnessing of this signature took place at that time?

A. That would have been the only time in the evening, in the hours in which I was employed, through my shift that I would have been around the information booth at all, due to the fact that I would have been in the back of the waiting room.

Q. And is it by reason of that fact that you now have [11] deduced or concluded that this must have occurred at that time, if it occurred at all?

A. It did.

Q. Is that your reasoning? You have no independent recollection?

A. Yes, I have. I recollect it happened at that time in the evening.

Q. Now, Mr. Jones, was this merely an incidental matter that occurred at that time? Did you think about it? Was there anything about it of such a nature as to cause you to keep it in your mind or remember it?

A. Well, due to the fact that I had previously to that had to witness another one of our own men's signing on some oil stock, and it came to me that

(Testimony of Robert N. Jones.)

I had made two witness signatures in a short period of time. That is the only way that I recalled it.

Q. Just due to the fact that you had witnessed another party's signature that caused you to remember witnessing this one, is that it?

A. Yes, sir.

Q. You were asked, Mr. Jones, as to the location of your signature. You say that is your signature on the instrument before you, Plaintiff's Exhibit 13, do you? A. Yes, sir.

Q. Do you have any independent recollection of where [12] you placed your signature upon that instrument except from the examination of the instrument itself? A. No, sir.

Q. So when you were testifying in answer to counsel's question that you had a recollection of where your signature was placed, that was only due to the fact that you were then looking at the instrument, is that right? A. That is right.

Q. What particular place in the Union Station, if you know, was this instrument signed?

A. At the information booths.

Q. Was that the information booth that you say was presided over by Mr. Burton?

A. Yes, sir.

Q. Are you acquainted with the location of the Missouri Pacific Railroad Shops in Kansas City?

A. No, sir.

Mr. Wynn: Pardon me just a minute. As of today or as of that date?

(Testimony of Robert N. Jones.)

Mr. McCormick: As of that day or as of today.

The Witness: I could go to them, but I couldn't tell you the address.

Q. (By Mr. McCormick): Well, do you have in your mind an idea as to the distance that those shops are located from the Union Station, the place where you were employed? [13]

A. What shops are you referring to?

Q. To the Missouri Pacific.

A. The Missouri Pacific has many different shops in Kansas City, that is, many different locations.

Q. The Missouri Pacific shops have a location in the East Bottoms? A. East Bottoms?

Q. Yes.

A. I would say approximately six miles.

Q. Who asked you to witness this signature?

A. Mr. Burton.

Q. Did he leave his information booth in order to locate you?

A. No, sir. He called me over.

Q. Now as to the man who placed his signature, as you say, upon this instrument, you were not acquainted with him? A. No, sir.

Q. And as to whether it was Lester Hurley or someone else, you merely took the word of Mr. Burton who, I presume, introduced you to the gentleman? A. I did.

Q. Who first inquired of you concerning this transaction?

(Testimony of Robert N. Jones.)

A. Mr. Stripp, Mr. Douglas Stripp, in Kansas City. [14]

Q. And when was that inquiry made?

A. That was made in June, I believe, of this year.

Q. Are you here at the present time by reason of any process or by voluntary arrangement as between Mr. Stripp or other parties connected with this litigation?

A. I volunteered.

Q. And who made those arrangements with you to come to California?

A. Mr. Stripp.

Q. Do you know who Mr. Stripp was representing in the making of those arrangements?

A. No, sir. That was not discussed. He didn't tell me at all.

Q. I believe you said that the last time that you recall having met Mr. Burton was in 1931?

A. Yes, sir.

Q. You have had no communications from Mr. Burton since 1931 up to the present time?

A. No, sir.

Q. I believe you stated that the only recollection that you have as to the time that this was, that it was possibly in the late fall or winter?

A. Yes, sir.

Q. And that was only due to the fact that you had a heavy uniform on at the time? [15]

A. That is right.

Q. Do you associate the manner in which you were dressed with the matter of witnessing this signature?

(Testimony of Robert N. Jones.)

A. I do not associate the manner in which I was dressed with the matter of signing the signature. As the question was asked me, if I recalled about the time of year.

Q. Well, then, did you recall the time of year independently as to whether you were wearing heavy or light clothes, or did you recall the time of year by reason of the manner in which you were dressed?

A. I recall from the time of year in the manner in which we were wearing our heavy uniform. All doors were closed and the station was under heat.

Q. Well, this was quite an incidental matter to you, was it not, Mr. Jones?

A. Yes, sir.

Q. Had you ever thought of it again until Mr. Stripp communicated with you?

A. No, sir.

Q. Did Mr. Stripp present to you the instrument which is now before you, Plaintiff's Exhibit 13, for your examination?

A. I believe a photostatic copy was presented to me for examination.

Q. I think you stated that you have no recollection [16] as to what year it might have been as to when this instrument was signed.

A. Yes, sir.

Q. How well acquainted were you with Mr. Burton during the time you worked there? Were you socially good friends or casual acquaintances?

A. Just casual acquaintances through employees' associations.

Mr. McCormick: That is all.

Mr. Wynn: No further questions. May this witness be excused, if the court please?

Mr. McCormick: As far as I am concerned.

The Court: You are excused from further attendance.

(Testimony of George E. Burton [17] follows.)

Wednesday, November 13, 1946, 2:00 P.M.

Mr. Wynn: Mr. Burton, will you take the stand?

GEORGE E. BURTON

called as a witness by defendant, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: George E. Burton.

Direct Examination

By Mr. Wynn:

Q. Mr. Burton, in answering my questions will you try to speak loudly enough so that I can hear you standing back here at the lectern? Are you related to the plaintiff Lester Hurley in this action?

A. Yes, sir.

Q. What is your relationship?

A. I am his uncle.

Q. What is your present business or occupation, Mr. Burton?

A. I am retired.

Q. And when did you retire?

A. Four year ago the 1st of October.

(Testimony of George E. Burton.)

Q. Prior to that time what was your occupation?

A. The last three years of my employment with the Terminal Company I was at the station called Central Avenue [2*] Station in Kansas City, Kansas.

Q. And before that date where were you employed? A. I was at the Union Station.

Q. Where was that located?

A. In Kansas City, Missouri.

Q. And what was your employment there?

A. Just prior to going to the Central Avenue Station I was red-capping and extra gateman.

Q. And prior to that time what was your employment?

A. I was in the Information Bureau from 1921, until 1933. When that was abolished, then I was out of service in '33 to '35.

Q. Where was this information bureau, as you call it, located?

A. It is located in the west lobby of the Union Station.

Q. What were your hours of employment?

A. We alternated from 7:00 until 3:30 and from 3:30 until midnight.

Q. How frequently did you do that?

A. Every two weeks.

Q. How many days of the week did you work?

A. Six.

Q. What day did you have off?

A. Saturdays.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of George E. Burton.)

Q. Now, what was your mother's name? [3]

A. Elizabeth J. Price.

Q. That was at the time of her death?

A. Yes, sir.

Q. Do you have any other brothers or sisters?

A. I had a sister that passed away in 1924.

Q. Is the plaintiff Hurley in this action related to her? A. He was her son.

Q. Did she have any other children?

A. She had one child that died at birth.

Q. Before or after the birth of Mr. Hurley?

A. Before.

Q. Do you have any children?

A. I have five boys and three girls living, and lost two boys at birth.

Q. Is one of your daughters named Helen?

A. Yes, sir.

Q. Is she married at the present time?

A. She is; yes, sir.

Q. And what is her name now?

A. Sanders, S-a-n-d-e-r-s.

Q. What is her age?

A. Helen was born in 1912, would make her 34.

Q. In the year 1928, where did your mother, Mrs. Price, reside? [4]

A. 1301 West 52nd, Los Angeles.

Q. How long had she resided there?

A. They came to California in 1916, and they lived at some other address—I don't recall it—for about two years, but she resided at 1301—well, I would say from 1920, until '31.

(Testimony of George E. Burton.)

Q. Were you acquainted with her husband?

A. I was.

Q. How long were you acquainted with him?

A. About 1910-1908; between '08 and '10.

Q. Until the date of his death?

A. Yes, sir.

Q. And that occurred when?

A. On the 5th of January in 1929.

Q. How do you fix that date?

A. I received a wire on the 1st of January from mother to come, and I arrived here on the 4th and he died the 5th.

Q. Between the date of your mother's removal to Los Angeles and the date of her husband's death had you visited them in this city?

A. I had; yes, sir.

Q. Can you now recall the dates of such visits?

A. Not exactly. I was here about four times before Mr. Price passed away; and it was in '25 and '26 and '27, and I might possibly have been out here in '24 but I don't recall it. [5]

Q. Were you here in Los Angeles prior to the date of the death of Mr. Price?

A. I was here in 1928, in the summer, June or July, along in there. I don't recall the month.

Q. And you came again in January of 1929?

A. Yes, sir.

Q. Then did you return to Kansas City with your mother? A. Yes, sir.

Q. Where was the funeral of Mr. Price conducted?

(Testimony of George E. Burton.)

A. Gibson's Mortuary at 7th and State, Kansas City, Kansas.

Q. Did you and your mother take the remains back there?

A. Yes, sir. Do you mean the funeral here? Pardon me.

Q. I was not referring to the funeral here, but did a funeral occur in Los Angeles?

A. They had it at Long Beach.

Q. And what date was that?

A. I think it was about the 7th of January.

Q. And when did you return to Kansas?

A. We left here on the 14th.

Q. What time did you arrive in Kansas?

A. The 17th.

Q. What hour?

A. It was in the morning. I don't remember the exact [6] hour.

Q. When was the funeral held in Kansas?

A. It was held in the afternoon of the 19th.

Q. Do you recall the hour?

A. Two-thirty, I think, was the hour in the afternoon.

Q. Do you recall who acted as pallbearers at that funeral?

A. There was four of my boys and my son-in-law and Lester.

Q. By "Lester" you mean Lester Hurley, the plaintiff in this case?

A. Lester Hurley.

Q. Where did your mother stay after returning

(Testimony of George E. Burton.)

from Los Angeles? A. She stayed at home.

Q. Where was that located?

A. 1046 Ann Avenue, Kansas City, Kansas.

Q. Where is your residence in relation to the place at which the funeral was conducted?

A. Approximately six blocks.

Q. Are you familiar with the location of The Brotherhood State Bank? A. Yes, sir.

Q. Where is it located?

A. At 8th and Minnesota, Kansas City. [7].

Q. With relation to your home how far away is it? A. About three blocks and a half.

Q. Now directing your attention again to the fall of 1928, did you receive any document or documents at that time in any way relating to any stock in the Southern California Edison Company?

A. I received dividend orders from mother.

Q. Do you recall approximately when you received them?

A. I don't remember the exact date but it was along around in the 20th, I guess, 21st.

Mr. McCormick: I did not get that answer. Twentieth of what month?

The Witness: Twentieth of November.

Mr. McCormick: Thank you.

Q. (By Mr. Wynn): How many such documents did you receive?

A. I received two and two separate letters.

Q. I show you now Plaintiff's Exhibit 10 and Plaintiff's Exhibit 13 and ask you to inspect the

(Testimony of George E. Burton.)

same and state whether or not those are the documents to which you refer?

A. Yes, sir; they are.

Q. Which of these documents did you first receive?

A. It was the one—this first one here. I don't know. It is "12742."

Q. And that is marked at the top as Plaintiff's Exhibit? [8]

A. No. 10.

Q. No. 10? A. Yes, sir.

Q. Now, at the time you received that document was there any writing thereon in addition to the printed matter?

A. Yes, sir; there was.

Q. What writing was on the document?

A. Well, the writing above "Mrs. Elizabeth J. Price."

Q. Are you referring to the signature?

A. No. "Elizabeth J. Price," "Mrs. Elizabeth J. Price" and "George E. Burton" and "Lester Hurley." That was on along with mother's signature.

Q. Now you are referring consecutively to the handwriting appearing on the first printed line and the second and third printed lines of the document?

A. That was on; yes, sir.

Q. And you are referring to——

A. A signature.

Q. ——the signature of "Mrs. Elizabeth J. Price" appearing after the word "Signature"?

A. Yes, sir.

(Testimony of George E. Burton.)

Q. Was the date appearing at the top of the document on it at the time?

A. It was; yes, sir. Yes, sir.

Q. Was the check mark appearing after the printed [9] word "Common" and the parentheses enclosing the figures "575" and the word "shares" on the document at that time, if you know?

A. Well, I don't recall them figures on there at the time.

Q. Now, what did you do with that document after you received it?

A. After I received it I signed it. And in mother's letter, she says, "Have Lester sign it and return it to me at once," which I did.

Mr. McCormick: Just a moment. I object to that latter part of that answer and ask that it be stricken out.

The Court: Which portion?

Mr. McCormick: About the "Lester signed it." It is what he did. It called for an answer as to what he did, not what he had not done.

The Court: Motion granted, beginning with the witness' statement as to what the letter said.

Q. (By Mr. Wynn): Now, after receiving this document did you communicate in any way with your nephew, Lester Hurley?

A. I think one of the children went over and got him. I don't remember just how they went, but he came to the house.

Q. What time of the day or evening did he come?

(Testimony of George E. Burton.)

A. It appears to me it was in the evening. [10]

Q. Before or after dinner?

A. After dinner.

Q. What did he do or what did you do after he came to your home?

Mr. McCormick: Now, just a moment, if your Honor please. The question that is now being asked tends to indicate that there is a desire here to elicit from this witness a statement as to whether or not Lester Hurley placed the signature upon this instrument which purports to bear the name of Lester Hurley. I object to this testimony and any testimony of this character with respect to the instrument in question, for the reason it is an attempt to make a collateral attack upon a judgment which is of the United States District Court for the District of Kansas wherein that particular issue as to whether he placed his signature upon this document occurred or not, as to whether or not the particular signature is a forgery, which question was a definite issue in that case and it was there determined that the signature was a forgery and that it was not the signature of Lester Hurley. This constitutes an effort to attack that judgment and to ask this court, by reason of the evidence given, to disregard and fail to give full faith and credit to a final, binding judgment, contrary to the provisions of the "full faith and credit clause" of the Constitution and Statutes passed in pursuance thereof. [11]

The Court: That brings up the same question we have with respect to the pleadings, findings, and

(Testimony of George E. Burton.)

judgment offered as Exhibit 14, Exhibit 14 for identification here. I will admit this witness' testimony at variance with the findings and the judgment of the court of the District of Kansas, and any testimony at variance with those findings or contrary or inconsistent with them will be received subject to a motion on the part of the plaintiff to strike at a later time if so advised, and that motion, of course, will turn upon the court's ruling with respect to the admissibility of Plaintiff's Exhibit 14 for identification. Clearly, this witness is bound by both the findings and that judgment, but the question still remains whether the defendant is barred by the findings.

Mr. McCormick: Quite true, your Honor. Thank you.

Mr. Wynn: May we have the pending question read?

The Court: Will you read it, please, Mr. Reporter?

(Question read by the reporter.)

A. Well, I believe I showed him the letter that I got from mother where she explained what she had asked to have done and he signed it.

Q. In your presence? A. Yes, sir.

Q. In the presence of any other person?

A. Well, it is witnessed by Helen, my daughter. [12]

Q. Was she present?

(Testimony of George E. Burton.)

A. She was, and I think there was two or three others around.

The Court: We will take the afternoon recess at this time of five minutes.

(Short recess.)

Q. (By Mr. Wynn): Prior to the recess, Mr. Burton, you were testifying with reference, I believe, to Plaintiff's Exhibit No. 10, being dividend order 12742. What did you do with that document after it was signed, as you say, by Lester Hurley?

A. I returned it to mother.

Q. Here in California? A. Yes, sir.

Q. And when did you return it?

A. Well, I think that same night. Her letter of instructions was to get it back as soon as possible.

Q. Now I direct your attention to Plaintiff's Exhibit No. 13 which is before you and ask whether you received that document?

A. I did, yes, sir.

Q. From whom? A. Mother.

Q. And what did you do with it after its receipt?

A. She had the same instructions in the other letter [13] as she had in the first.

Q. Did you make any effort to get in touch with Lester Hurley after its receipt?

A. Yes. I think one of the children went over and told him about it.

Mr. McCormick: Just a moment. I object to the

(Testimony of George E. Burton.)

statement of the witness as to what he thinks, and ask that he be required to state what he knows.

Q. (By Mr. Wynn): Well, is that your best recollection? A. Yes, sir.

Q. Now, did you meet with Lester Hurley after receiving that document from your mother?

A. Yes, sir.

Q. Where did the meeting take place?

A. It took place at the Union Station.

Q. In what year? A. In 1928.

Q. And do you recall the month?

A. November.

Q. What time of the day?

A. Well, it was in the evening.

Q. Approximately what time?

A. Between 6:00 and 7:00 o'clock.

Q. Were there any other persons present at that meeting?

A. Well, there was always the two of us in the [14] information bureau, but I don't recall the other party that was working with me, but I called Jones over from the door A and introduced him to Lester and asked him if he would witness his signature.

Q. Did Lester Hurley sign the document in your presence? A. He did.

Q. And in the presence of R. N. Jones?

A. Yes, sir.

Q. And this Mr. Jones was the witness who testified last in this court room? A. Yes, sir.

(Testimony of George E. Burton.)

Q. Was Mr. Hurley standing or sitting at the time he signed? A. He was standing.

Q. Did Mr. Hurley sign before Mr. Jones?

A. Yes, sir.

Q. And then Mr. Jones signed in your presence?

A. Yes, sir.

Q. And in the presence of Mr. Hurley?

A. Yes, sir.

Q. Did anything else transpire at that meeting?

A. Nothing that I can recall only——

Q. What did you do with the document then?

A. Well, I returned it to mother by mail.

Q. With reference to that document, when you received [15] the same was there any writing thereon other than the writing appearing on and below the first printed word "Signature"?

A. Was any writing below here?

Q. That is correct. I am indicating any writing below the printed word "Signature," the first printed word "Signature."

A. Mother's signature was on there, "Elizabeth Jane Price."

Q. And her address?

A. "1301 West 52nd," yes, sir; that was on.

Q. But no other writing below that?

A. No, sir.

Q. Was there any writing above that?

A. Yes; there was.

Q. On the first printed line was there any writing? A. Above, do you mean?

(Testimony of George E. Burton.)

Q. The first printed line on the document.

A. "Elizabeth Jane Price" was on.

Q. And on the next two printed lines was there any writing?

A. Yes; "Elizabeth Jane Price and George E. Burton and Lester Hurley."

Q. Appearing after the word "Common" was there a check mark, parentheses, figure "88," word "shares" in parentheses on that document? [16]

A. I don't recall them being on at the time.

Q. Do you recall whether there was a check mark and the figures and words "(191 shares)"?

A. No, sir; I do not.

Q. Do you recognize the handwriting which you have testified was on the document at the time you received it?

A. My mother's handwriting. Her signature here is all of hers. The others I don't know.

Q. Yes. What about any other handwriting on the document?

A. No; I don't know. I don't recognize any handwriting except hers.

Q. Then the handwriting I have referred to on the printed lines on the document you cannot identify?

A. No, sir.

Q. Is that true of Plaintiff's Exhibit No. 10?

A. Yes.

Q. To which you have previously testified. [17]

* * *

Q. Now recalling your attention to this informa-

(Testimony of George E. Burton.)

tion booth in the Union Station, can you describe for us the size?

A. Well, it was a hexagon shape, marble. Oh, I would say it was probably 10 feet across. [20]

Q. And in the shape of a hexagon?

A. Yes, sir.

Q. And did it have a counter surrounding it?

A. No, sir; it was just the path, flat. Well, it was a counter all the way around, you might call it.

Q. What material was the counter composed of?

A. It is marble.

Q. About what height was this counter?

A. Oh, I would say it was four feet.

Q. And what was the width?

A. Probably two.

Q. Were there any pens or other writing instruments on it? A. No, sir.

Q. How long have you known the witness, Mr. Jones, who previously testified?

A. Well, I got acquainted with him shortly after he went to work there, just in the way of seeing him the same as any other employee that would be employed there.

Q. And prior to the time of this trial when had you last seen Mr. Jones to your knowledge?

A. Well, it was back in '31.

Q. Now, were you acquainted with the financial affairs, property affairs of your mother during her lifetime? A. Most all of it; yes, sir. [21]

Q. In the fall of 1928, did you know what her financial condition was at that time?

(Testimony of George E. Burton.)

A. No, sir; I did not.

Q. After the death of Mr. Price in January of 1929, did you learn what her financial condition was? A. I did.

Q. What property did she have?

A. According to Mr. Price's will the home was left to her during her lifetime, and then what stock she had in the Edison Company.

Q. Do you know what stock she had in the Edison Company?

A. I knew after Mr. Price's death. She showed me the certificates at that time.

Q. Did she have any other property from which she received any income?

A. Not at that time; no, sir.

Q. Did she at any time after Mr. Price's death have any other property?

A. She didn't have any property. She had two mortgages, one in Compton and, I believe the other was in Watts.

Q. Approximately what amounts?

A. Well, the mortgage was for a thousand dollars on each place.

Q. And the sole source of income was from the dividends on this Edison Company stock to the best of your knowledge? [22] A. Yes, sir.

Q. And that stock included the stock involved in the present action, did it? A. Yes, sir.

The Court: There was other and additional stock?

(Testimony of George E. Burton.)

The Witness: You mean 575 shares, 191 of preferred and 88 of common?

The Court: Was there other stock which your mother owned?

The Witness: No.

The Court: In other words, the stocks involved in this action is all the stock that she had?

The Witness: Was all the stock she had; yes, sir.

The Court: At any time?

The Witness: No. She had—later on, she had 40 shares. My daughter, Mrs. Jones—that was about, oh, two or three years afterwards that she had purchased that.

The Court: Following the death——

The Witness: Of Mr. Price; yes, sir.

The Court: Of Mr. Price. That was in 1929?

The Witness: That is when he passed on, but this was several years later when she purchased it.

The Court: How old was Mr. Price when he died?

The Witness: He was 98—around 89.

Q. (By Mr. Wynn): How old was your mother at the time [23] of her death?

A. She was 95 and would have been 96 in July.

Q. I now hand you Plaintiff's Exhibits 1 through 7, inclusive, and ask you to examine the document attached to each of those exhibits entitled "Assignment of Stock and Irrevocable Power of Attorney." Each of the documents to which I have referred appears to bear the signature of your

(Testimony of George E. Burton.)

mother, Mrs. Price, and of yourself, Mr. Burton.

Are those your signatures? A. Yes, sir.

Q. They also appear to bear the signature of the plaintiff, Lester Hurley, or Lester W. Hurley, as it appears on those documents. Are those his signatures? A. Yes, sir.

The Court: Did you see him sign them?

A. Yes, sir.

Q. (By Mr. Wynn): Now, do you recall or can you give us any idea as to the time that those documents were signed?

A. It has been brought before my attention quite a number of times in the last year or two, and I set the date as on the 18th of December in 1929—pardon me, 18th of January, 1929.

Mr. McCormick: Do I understand your answer to be that you did set the date at that, or that you could now set the date at that? [24]

The Witness: I now set the date at that, as the 18th of January in 1929.

The Court: Is that two days after Mr. Price's funeral?

The Witness: No. That was before Mr. Price's funeral.

The Court: His funeral was on the 19th?

The Witness: His funeral was on the 19th; yes, sir.

Q. (By Mr. Wynn): You had arrived back in Kansas City on the 17th, had you?

A. Seventeenth; yes, sir.

(Testimony of George E. Burton.)

Q. What day of the week did the funeral take place? A. It was on Saturday.

Q. So that by reference to the date you returned to Kansas City and the date of the funeral you now fix the date that these signatures were affixed?

A. As on the 18th; yes, sir.

Q. At that time did anyone else affix a signature to that document?

A. Yes; mother, Lester Hurley and myself.

Q. Did you understand my last question?

A. No; probably I didn't, sir.

The Court: He answered it.

Mr. Wynn: I did not think that he did.

Q. I said, did anyone else other than the three of you attach a signature to that document?

A. Yes, sir; my first wife. [25]

Q. And did anyone in addition to her?

A. Well, I don't think that Alberti's signature was on. If it was on, it was put on after we left.

Q. Now I direct your attention to the fact that there appear to be three signatures by Mr. Alberti on that document. Do you recall whether any one of those three signatures were affixed at that time?

A. They were not when we signed them.

Q. Well, after you signed them and while you were still present?

A. He might have signed them right then but I didn't notice it.

Q. After you signing those documents, as you have testified, and Mr. Hurley signing them did you ever see them again?

(Testimony of George E. Burton.)

A. No; I didn't. Pardon me. I saw them once after that, not for examination, but I saw them on the desk at the bank.

Q. On whose desk? A. Mr. Alberti's.

Q. Well, approximately when was that with relation to the date that you signed?

A. Oh, I would say two weeks.

Mr. McCormick: Pardon me. Do I understand your answer to be that you saw these certificates of stock or merely the assignment? [26]

A. I saw the stock certificates, or the papers were on the desk and Mr. Alberti had called me, saying that there was a correction that he had to make out and that there was an "and" or it should be "or"; that there was "or" on there and it should be an "and."

Mr. McCormick: And the assignment that you are talking about upon which signatures appear at the time that you saw them two weeks after the signatures were affixed upon Mr. Alberti's desk and attached to the certificates of stock themselves?

A. Yes, sir.

Q. (By Mr. Wynn): Do you know whether the actual stock certificates were then attached to the assignments? A. Yes.

Q. Did you pick them up and look at the stock certificates?

A. No; they were laying on the desk.

Q. They were lying on the desk as the documents are now lying in front of you? A. Yes, sir.

(Testimony of George E. Burton.)

Q. As the documents are now lying in front of you can you see any colored paper?

A. No, sir.

Q. Were they turned over so that you could see colored paper while they were there? [27]

A. No; they were on the other side.

The Court: You are referring now to Exhibits 1 to 7?

Mr. Wynn: One to 7. Thank you, your Honor.

Q. Since that date in the year 1929, have you ever seen the documents now before you, that is Plaintiff's Exhibits 1 through 7, until the present date?

A. No, sir. These, you mean?

Q. Yes; indicating Plaintiff's Exhibit 1 through 7.

A. I have seen them at the other trial, these documents here.

Mr. McCormick: If your Honor please, I apologize for interrupting, but I would like to have this matter cleared up as to what the witness' answer is one way or the other if I may at this time before it is left. As I understood his answer as first made, that he saw these instruments upon the desk of Mr. Alberti about two weeks after the signatures were affixed, meaning the entire instruments, the stock certificates and the assignments. And I would like to know whether that is the answer.

The Court: Is that your answer?

The Witness: Yes, sir.

Mr. McCormick: Thank you.

The Court: Is there a pending question?

(Testimony of George E. Burton.)

Mr. Wynn: I do not believe there is. You did not object to the pending question? [28]

Mr. McCormick: I did not.

Q. (By Mr. Wynn): What time of the day did the affixing of these signatures occur in fact?

A. I think it was in the morning.

Q. Did anyone accompany you to the bank when you went?

A. My mother, my wife, myself, and Lester was there.

Q. Was Lester, meaning Lester Hurley, there in the bank when you arrived?

A. No. I think we all went in together.

Q. Where had you met?

A. We met at my home. Mother was staying there and Lester came over.

Q. And this was on the day before the funeral?

A. The day before the funeral; yes, sir.

Q. Had Lester called at your home after your arrival from California prior to this occasion on the 18th?

A. I think he was there on the same day that we arrived.

Q. When you left the bank after affixing the signatures did you all leave together?

A. Yes, sir.

Q. What did you do then?

A. Well, he walked across the street to take a streetcar, and mother and I and my wife went home.

Q. Across the street from where? [29]

A. From the bank.

(Testimony of George E. Burton.)

Q. Your wife went home with you?

A. Yes, sir. [30]

* * *

Mr. Wynn: Mr. Burton, will you take the stand again?

GEORGE E. BURTON
(Recalled)

Direct Examination
(Resumed)

By Mr. Wynn:

Q. Mr. Burton, I hand you Plaintiff's Exhibit 12 and ask you to please inspect it.

A. Yes, sir.

Q. When, if you know, was the plaintiff, Mr. Hurley, first married?

A. On about December the 19th in 1927.

Q. Did you attend the wedding?

A. No, sir.

Q. When did you learn of his marriage?

A. Oh, I guess it must have been several weeks afterwards.

Q. Do you know where he was married?

A. No. I understood it was at [32] Independence.

Cross-Examination

By Mr. McCormick:

Q. Now, Mr. Burton, will you state to the court as to where you live? What is your home?

(Testimony of George E. Burton.)

A. 1046 Ann Avenue in Kansas City, Kansas.

Q. And how long have you lived in Kansas City, Kansas?

A. Sixty-nine years.

Q. What is your present age?

A. Sixty-nine. I was born and raised there.

Q. When did you arrive in California on this trip?

A. A week ago today, Friday.

Q. State to the court at whose request that you came to California this time?

A. No request. I volunteered.

Q. No process served upon you requiring you to appear in this case?

A. No, sir.

Q. Have you consulted with counsel relative to this case since arriving in California?

A. Only what has been here about it—I went to his office the first morning.

Q. Now, by what has been here and his office, whose office do you mean?

A. Mr. Wynn's.

Q. You did consult with Mr. Wynn, the attorney representing the defendant in this case? [39]

A. I didn't consult with them. We just had a verbal conversation there in the morning.

Mr. Wynn: I will stipulate that on several occasions I have discussed the testimony of Mr. Burton with him.

Q. (By Mr. McCormick): Now, Mr. Burton, did the Southern California Edison Company, the defendant in this case, notify you of this suit shortly after the filing of the suit?

A. No.

Q. When did you first learn of this suit being on file in this court?

(Testimony of George E. Burton.)

A. It was along in June, I believe.

Q. Of what year? A. This year.

Q. And did you receive any notification from the defendant company making demand upon you to defend this suit?

Mr. Wynn: I object to that, if your Honor please. That is incompetent, irrelevant and immaterial; it is not proper cross-examination. Whether a demand was made on the witness has nothing whatever to do with this testimony.

The Court: Overruled. You may answer.

A. Well, I went down to see Mr. Weeks. I don't remember now who I got the first letter from. And he in turn corresponded with Catlin & Catlin.

Q. (By Mr. McCormick): Mr. Weeks is the attorney that [40] represented you in the case of Burton versus Hurley tried in the Kansas court?

A. Yes, sir.

Q. Did you receive any letters direct from the Southern California Edison Company's attorneys or Southern California Edison Company or their attorneys? A. No, sir.

Q. After consulting with Mr. Weeks concerning this letter that you say was received by him, what then did you do?

A. Well, he corresponded with Catlin & Catlin, attorneys out here.

Q. Have you consulted with Mr. Catlin while you were in California?

A. I was in his office one day for about——

Q. Well, does Mr. Catlin represent you or has

(Testimony of George E. Burton.)

he represented you and advised you with respect to this suit? A. He has represented me.

Q. Is he now representing you?

A. No, sir.

Q. Has Mr. Catlin been here at the counsel table each day this trial has been in progress up until this morning? A. Yes, sir.

Q. And he was here at your request? [41]

A. Well, it was the suggestion of Mr. Weeks.

Mr. McCormick: I ask the answer be stricken out. A. At my request; yes, sir.

Mr. McCormick: As not responsive.

Mr. Wynn: The witness has said by his request.

The Court: Motion denied. He said he believed it was the suggestion of Mr. Weeks at his request.

Q. (By Mr. McCormick): Did you make any request of him since arriving here to appear in this court? A. No, sir.

Q. Now, do you say that you received or that you did not receive, whether it was through your attorneys or personally, a demand on the part of Southern California Edison Company to appear and defend this case?

A. I did not have any—I did not receive anything from the Southern California Edison Company.

Q. Did you receive anything through your attorney, Mr. Weeks? A. No, sir.

Q. So your testimony is that no demand has been made on you to appear and defend this case?

A. No, sir.

(Testimony of George E. Burton.)

Q. State whether or not that you feel that you have an interest in this case?

A. Well, I—a personal interest, I think I have in [42] a way.

Q. Is it because of that personal interest that you are here at the present time?

A. No, sir. I am on my way to visit a sister-in-law in Hanford.

Q. Hanford, California? A. Yes, sir.

Q. And you merely stopped in here during the course of your trip? A. Yes, sir.

Q. Weren't you notified of the time to be here in order to participate in the trial?

A. Yes. I got that information from Mr. Weeks and subsequently made my plan on this trip accordingly.

Q. Now, Mr. Burton, I believe you have stated on direct that William Price died January 5, 1929?

A. I did; yes, sir.

Q. You were in California with your mother at the time of the death of William Price, were you not?

A. I was here. I was at his bedside when he passed on.

Q. And after the death of William Price, I believe you stated that there was a funeral held here in California or in Los Angeles for Mr. Price?

A. It was at Long Beach. [43]

Q. Long Beach? A. Yes, sir.

Q. All right. And that was on the 7th day of January, 1929? A. I believe it was the 7th.

(Testimony of George E. Burton.)

Q. Now, when did you leave Los Angeles to return to Kansas City, Missouri?

A. The 14th of January.

Q. And you arrived in Kansas City, Missouri, on what date? A. The 17th.

Q. And in 1929? A. Yes, sir.

Q. What hour of the day?

A. I don't remember the hour. It was in the morning.

Q. Tell the court, if you will, why you remained in California before return to Kansas City with the remains of Mr. Price for a period of seven days following the funeral held here.

A. Well, it was mother's suggestion. She had certain things to look after before she went back.

Q. Had business to transact?

A. I presume so; yes, sir, closing the house.

Q. You were reasonably well informed with respect to your mother's business and affairs, were you? [44]

A. No, sir; not entirely.

Q. Was it your desire to be of assistance or aid her in handling or discharging any business obligation that she had?

A. Naturally, I would be interested.

Q. Well, did she discuss then her business affairs with you at that time?

A. Not all of them; no, sir.

Q. Well, did she discuss any of them?

A. Well, she discussed things pertaining to the funeral and arrangements in Kansas City and such as that.

(Testimony of George E. Burton.)

Q. Discuss with you her property, her property assets? A. No, sir.

Q. Or property holdings? A. No, sir.

Q. Did your mother have a safety deposit box in Los Angeles?

A. I am not positive whether it was in both their names, but I have an idea it was.

Q. Well, was there such a deposit box that you at any time have knowledge of the fact of it being used by your mother?

A. Mr. Price took me to the vault and pointed up and says, "There's our box up there. You might at some time have occasion to want to know where it is." [45]

Q. Now, Mr. Burton, didn't your mother point out this box to you?

A. Mr. Price is the one that pointed it out.

Q. Well, did she at any time ever point it out?

A. No, sir.

Q. She did not? A. No.

Q. Did you go to the safety deposit company with your mother before leaving for Kansas City, Missouri, after the death of William Price?

A. Yes, sir.

Q. All right. Did you then see that she entered a safety deposit box? A. I did.

Q. And what did she remove from the safety deposit box, if you know?

A. Well, what papers she had in there.

Q. Did she remove any stock of the Southern California Edison Company?

(Testimony of George E. Burton.)

A. The stock was in the safety deposit box and was removed.

Q. All right. Did she remove the 575 shares of stock represented here by Plaintiff's Exhibits 1 to 7?

A. She removed all papers that was in that box.

Q. Including that stock? [46] A. Yes, sir.

Q. Now, what did she do with that after she removed it, the stock?

A. Well, I don't remember whether it was the same day or a few days after, she went to the Southern California Edison Company and——

Q. Did you go with her? A. I did.

Q. Who did you see at the Southern California Edison Company? A. Mr. Greenhouse.

Q. You saw Mr. Greenhouse in the presence of your mother? A. I did.

Q. What did your mother say to Mr. Greenhouse or what did Mr. Greenhouse say to her?

A. I don't know the exact conversation.

Q. Give us, to the best of your recollection, the substance of that conversation.

A. Well, she had some conversation in regard to the stock.

Q. Well, what was it?

A. I don't know word for word.

Q. I told you that I would be satisfied with the substance of it. [47]

A. Well, it was in regard to the transfer of the stock. She claimed that Hurley's name should not be on there.

(Testimony of George E. Burton.)

Q. And you went to the Southern California Edison Company for the purpose of endeavoring to ascertain whether his name could be removed from that stock; was that the purpose of it?

A. I presume.

Mr. Wynn: I object to the question—if you make it clear whether it is his purpose or the purpose of Mrs. Price in your question——

Mr. McCormick: The purpose of Mrs. Price and his purpose as well.

The Witness: I presume it was mother's purpose. He wanted some information in regard to it.

Q. Did your mother tell you that that was a mistake or an error in regard to this stock?

A. She didn't tell me anything in regard to it.

Q. Didn't she tell you that it was an error for Lester Hurley's name to be included in this stock prior to the time that you went down to the Southern California Edison Company? A. No, sir.

Q. To see whether or not it could be transferred out of his name? [48] A. No, sir.

The Court: Did she get the assignment forms that are attached to Exhibits 1 to 7 from the Edison Company at that time?

The Witness: No; I don't believe they were given to mother at the time.

The Court: Were they at some later time?

The Witness: Do you mean for the dividends?

The Court: No. I am referring to the forms of assignment that are on the stock certificates.

(Testimony of George E. Burton.)

Mr. Wynn: May those be exhibited to the witness?

The Court: Yes.

Mr. Wynn: So it is clear.

The Court: Will you hand Exhibits 1 to 7 to the witness, Mr. Clerk?

The Witness: You mean this portion of it?

The Court: That part that you signed there.

The Witness: Yes; I think that mother—he gave those at the same time, but I am not positive. I was just there with her. Her conversation with Mr. Greenhouse was as it would happen in any office.

The Court: She was asking him how to get this stock?

The Witness: Yes, sir.

The Court: Out of Lester Hurley's name into her name and your name? [49]

The Witness: Yes.

The Court: He made some explanation to her, did he?

The Witness: Yes. As near as I can remember any conversation, he stated if she took that back to Kansas City and have the signatures attached and then return to him.

The Court: Did he give her the forms then?

The Witness: I am not positive whether they were handed at the time or whether it was handed later on.

Q. (By Mr. McCormick): Your deposition was

(Testimony of George E. Burton.)

taken, Mr. Burton, on September 16, 1944, in the case of Burton versus Hurley and Southern California Edison Company, was it not?

A. Yes, sir.

The Court: That is the Kansas court action?

Mr. McCormick: Yes, your Honor. By permission of the court, I would prefer to read the questions, if I may, to the witness without previously presenting them. I believe it will save some time if that is not unsatisfactory to the court.

The Court: Is there objection to that method?

Mr. Wynn: No. I have never seen the deposition and I would like to read it with you and look at it while you are reading.

Mr. McCormick:

“Q. You say you went with her to the Edison Company with certain certificates? [50]

“A. Yes.

“Q. For what purpose?

“A. Because his name was attached to it and she said it was an error.

“Q. She said it was an error? A. Yes.

“Q. Told you that it was an error?

“A. She told Mr. Greenhouse of the Southern California Edison Company it was.

“Q. And then what happened or what was done with the stock?

“A. Well, he advised her to take the stock and have it transferred and have Lester sign his name to it.”

(Testimony of George E. Burton.)

You so testified; those questions were asked and those answers given? A. Yes, sir.

The Court: Was anything said about transferring the other 88 shares of common and the 191 shares of preferred out of Lester's name?

The Witness: No, sir.

The Court: Was that ever discussed?

The Witness: No, sir. Only mother—that stock was, I believe, in mother's name and she said that that was to be left to Lester and I, the 88 shares of common and the [51] 191 shares of preferred. That was the intentions and was his part of the transfers that was made.

The Court: Is that what she told you?

The Witness: Yes, sir.

Q. (By Mr. McCormick): I also ask you, Mr. Burton, as to whether these questions were asked you and these answers given:

“Q. Do you know in substance what the conversation was?

“A. Well, I knew she was there to get his advice on the transfer of the stock.”

Mr. Wynn: That, for the purpose of the record, is referring to a conversation between Mrs. Price and Mr. Greenhouse.

Mr. McCormick: And as between Mr. Burton and his mother.

Mr. Wynn: Yes. It is referring to the meeting at the Edison Company to which testimony has been previously directed.

Mr. McCormick: That is true.

(Testimony of George E. Burton.)

Mr. Wynn: It was not clear from the question.

Mr. McCormick:

“Q. And do you know what advice he gave her?

“A. No; only the advice that she had from Mr. Greenhouse that Southern California Edison Company [52] was to have this stock transferred back; that it was an error.

“Q. Now, in this connection I am going to ask you, Mr. Burton, just to relate all the conversation that you remember.”

I withdraw that question. It relates to another subject.

The Court: Did you so testify with respect to the questions and answers thus far read?

The Witness: Yes, sir.

Q. (By Mr. McCormick): Now, Mr. Burton, after receiving this advice from Mr. Greenhouse and giving to Mr. Greenhouse the information, as you say was given him, that this was an error and that Lester Hurley's name was in it improperly and should be removed, did you return to Kansas City with the stock then in the possession of your mother?

A. Mother had the stock in her possession. We left here on the 14th of January.

Q. After you arrived in Kansas City it was your purpose to endeavor to secure the transfer of these shares out of the name of Lester Hurley and into the name of yourself and your mother?

(Testimony of George E. Burton.)

A. That was mother's idea; yes, sir.

Q. And she so advised you?

A. Advised me? [53]

Q. Yes; informed you that that was her purpose and desire? A. Yes, sir.

Q. In pursuance of that purpose I will ask you to state if you got in communication with Mr. Hurley?

A. I did not myself. Mother had some arrangements with him.

Q. Now, do you know that she had some communications with him or do you just assume that that was the fact?

A. Well, she got in touch with him, I believe sent one of the boys over, one of the children over. I don't remember whether he had a phone at the time, but she made arrangements for him—in fact, I believe he was over when the train arrived.

Q. Do you know whether or not your mother made any arrangements with Mr. Hurley to meet her at any time relative to this stock, of your own knowledge?

A. I don't know of any conversation, but there was some arrangements made.

Q. Now, did you hear her call him?

A. I did not.

Q. Did you know of her sending any messenger or making any arrangements of any kind or character? A. No; I do not. [54]

Q. Then, you do not know how the arrangements, if any, were made?

(Testimony of George E. Burton.)

A. No; I don't know how they were made.

Q. Did you ever hear any discussion between your mother and Lester Hurley on any occasion relative to this stock? A. No, sir; I did not.

Q. Then, as to how, if it is a fact that Mr. Hurley at any time met you and your mother relative to the transfer of this stock, you do not know how it came about that he did so meet you?

A. I don't know just exactly any arrangements that was made between mother and he.

Q. Mr. Burton, did you at any time ever discuss with or mention to Mr. Hurley this stock represented by Plaintiff's Exhibits 1 to 7?

A. Do you mean prior to mother's death?

Q. Yes; prior to your mother's death.

A. No, sir.

Q. Now, Mr. Burton, I will ask you to state as to when you say that Mr. Hurley appeared at the Brotherhood State Bank, at which time you state that these assignments that appear attached to Exhibits 1 to 7—when did that occur?

A. As near as I can remember, I think the date was [55] on the 18th of January.

Q. Well, now, is that as nearly as you can remember? Do you have any recollection that that was the date?

A. The only recollection I have of it, that was when we were in the bank, but the date, I think, was the 18th.

Q. When did you first come to the conclusion that this transfer transpired on the 18th?

(Testimony of George E. Burton.)

A. Well, I have had plenty of time to think of it in the last two years.

Q. Prior to the former trial—the trial of this case, I should say, of Burton versus Hurley, you had considerable time in which to think of it then, didn't you?

A. Before it was brought to my attention at the trial is that?

Q. Yes; when the suit was filed, when you filed the suit concerning this stock.

A. There was plenty of time; there was about four months, I believe.

Q. You testified in that case that was tried in the District Court?

A. Yes, sir.

Q. And you gave your deposition to which I have already referred prior to the trial of that case on September 16, '44?

A. Yes, sir. [56]

Q. And then subsequent to that date you gave your deposition in the present case now before the court on trial on October 19, 1946?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. I believe you stated that you feel that this occurrence took place in the morning of the 18th?

A. Yes, sir.

Q. That is your present testimony, is it?

A. As near as I can remember; yes, sir.

Mr. McCormick:

“Q.” —

Mr. Wynn: From what page are you reading and what deposition?

(Testimony of George E. Burton.)

Mr. McCormick: 19, from the deposition as given in the case of Burton versus Hurley:

“Q. What time of day was this?

“A. I don’t remember the exact time. It was before 3:00 o’clock in the afternoon.

“Q. Was it in the morning or in the afternoon?

“A. I don’t remember the exact time.

“Q. You don’t know what time of day it was? A. No.”

Those questions were asked you and those answers made? A. Yes, sir. [57]

Q. Why are you any more certain now that it was in the morning than when you gave that testimony?

A. Well, mother was stopping at my place at the time and I remember after we got back from the bank we had dinner. We had our lunch at that time.

Q. Well, has that been a matter that you just found out? Didn’t you know that at the time you gave this deposition?

A. I had plenty of time to think recently, but I am not positive exactly the exact time. It might have been 1:00 or 2:00 o’clock before we had our lunch.

Q. Again, I ask if these questions were asked you and these answers given:

“Q. You gave us the date of the burial of William Price, I believe?

“A. 19th of January.

(Testimony of George E. Burton.)

“Q. 19th of January? A. Yes.

“Q. 1929? A. Yes.

“Q. Give us, if you will, the date upon which you say that Lester Hurley, Mrs. Price, and yourself met Mr. Alberti at the bank for the purpose of transferring this stock.

“A. Well, I didn’t say the exact date, but it was [58] along in the latter part of January or the first part of February. I don’t remember the exact date.

“Q. That is as near as you can come to it?

“A. Yes.

“Q. Do you have any memorandum or documents or anything to refresh your recollection that will give you the exact date? A. No.

“Q. You stated that it occurred after the burial of Mr. Price? A. It did.”

Q. Were those questions asked you and those answers given?

A. Yes; those questions were answered.

Q. Explain to the court why it is at the present day that you claim to have a recollection of this having occurred on the morning of the 18th of January, when you have previously definitely testified that it occurred after the burial of Mr. Price which occurred on the 19th of January, 1929?

A. Well, that is quite a number of years back to get it exact. Since I have had plenty of time to think this matter over recently, I can pretty near form the conclusion that it was on the 18th.

(Testimony of George E. Burton.)

Q. Your memory with respect to matters has gotten [59] better as time has elapsed?

A. It has in regard to this matter; yes, sir.

Mr. Wynn: Have you refreshed your recollection in any way?

The Witness: Well, there isn't any specific thing that I can think of that would remind me of the exact hour, but I know at the time we got back to Kansas City mother was very anxious to have that matter taken care of.

Q. (By Mr. McCormick): Now, you spoke of having plenty of time to think this matter over. In the trial of the case of Burton versus Hurley, I will ask you if this question was asked you and this answer given:

Mr. Wynn: Now reading from a transcript of the trial?

Mr. McCormick: Yes; and I so designated.

“Q. As far as you now remember, you were there on this one occasion when you were all there together and signed these instruments?

“A. Yes, sir.

“Q. Was that during banking hours?

“A. Yes.

“Q. Was it in the morning or the afternoon?

“A. I do not know what time of day it was.”

Were those questions asked and those answers given? A. Yes, sir.

(Testimony of George E. Burton.)

Q. In the giving of your deposition on October 19, 1946, less than a month ago, I will ask you if these [60] questions were asked and these answers given:

“Q. And from the time the matter was first taken up with Mr. Alberti, how long a period of time elapsed, to the best of your knowledge, until an effort was made to secure the endorsement or the assignment of this stock?

“A. Well, it was only a few days.

“Q. A few days. Now, Mr. Burton, was the stock, which in the former trial and the certificate numbers which I have read to you here identified as Exhibits ‘1’ to ‘7,’ were they taken down to Mr. Alberti by your mother and the endorsement made by yourself and Mrs. Price of these certificates? A. Yes.

“Q. Now at the time that this endorsement occurred on the assignment of stock and irrevocable power of attorney, who was present?

“A. Well, my wife was present, Lester was there, myself and mother.

“Q. And that was in the bank, the Brotherhood State Bank of Kansas City, Kansas?

“A. Yes.

“Q. Now did you all go down to the bank together, or did you go separately?

“A. I know my wife and my mother and I went [61] together, and I think we met Lester there.

(Testimony of George E. Burton.)

“Q. What time of day was that, if you recall? A. Well, it was in the morning.

“Q. And do you know what day it was?

“A. Not the exact date, no.

“Q. To the best of your recollection between what dates would you say that this action occurred?

“A. Well, it was right after we got back from California with Mr. Price's body.

“Q. Well, how long afterwards?

“A. Well, I don't recall.

“Q. Would you say that it occurred sometime between the 19th of January and the 19th of February, 1929?

“A. I would say sometime between the 17th of January.

“Mr. Stripp: And what?

“Q. 17th of January, 1929? A. Yes.

“Mr. Stripp: Between what and what?

“A. Well——

“Mr. Stripp: Can't be between one date.

“A. No. Well, say between the 17th and 19th.

“Q. Between the 17th and 19th?

“A. Or the 17th and 20th, along in there. It was [62] right shortly after we returned from California.

“Q. I will ask you to state, Mr. Burton, whether or not these questions were asked you and these answers given, on page 163 of the transcript of the testimony given in the United

(Testimony of George E. Burton.)

States District Court of Kansas City, Kansas:

“ ‘Question: And you accompanied your mother in bringing the body back?

“ ‘Answer: I did.

“ ‘Question: I think you said he was buried on the 19th of January?

“ ‘Answer: Yes.

“ ‘Question: These certificates on this occasion in the bank you referred to then occurred between January 19th and February 19, 1929?

“ ‘Answer: They did.’ ”

Those questions were asked you and those answers given?

Mr. Wynn: In both the deposition and in the transcript?

Mr. McCormick: In both the deposition and in the transcript?

A. Yes, sir.

“Q. It is your desire now to say that your best recollection is that it occurred between the 17th and 19th or 20th of January, 1929?

“A. Well, no, it might have been [63] later on.

“Q. I see.

“A. But it was from the time we got back, and, oh, in—well, I would say a week or two.”

Those questions were asked and those answers given? A. Yes, sir.

Q. Explain, if you can, to the court as to how your memory has even gotten so much better with

(Testimony of George E. Burton.)

respect to this matter from the 19th day of October up to the present time. A. Of this year?

Q. Of this year, yes.

A. Well, as I say, there has been so much come up before me that gives me a chance to think these matters over.

Q. You had all the time that has elapsed during any of this time, except the period of time from the 19th up to the present time, haven't you?

A. Well, I have had a lot of time to think of it in that time; yes, sir.

Q. Mr. Burton, after the trial of the case of Burton versus Hurley and the decision rendered in that case did you read the opinion of the court?

A. No, sir; I did not all of it. I read some of it.

Q. You read some of it? A. Yes, sir.

Q. It was not of sufficient interest to you to read it all? [64]

A. I didn't have it in my possession to read it all.

Q. I will ask you to state, Mr. Burton, whether you read this portion of the opinion:

“* * * These seven instruments are undated but show they were received by Edison at Los Angeles on three different dates, viz., Jan. 22 a.m., Feb. 1 a.m., and Feb. 18 p.m., all in 1929.”

Mr. Wynn: Pardon me. That is referring to these instruments now before the witness?

Mr. McCormick: That is right; Exhibits 1 to 7.

“The issue of the six certificates of stock

(Testimony of George E. Burton.)

under authority of these instruments was made on February 19, 1929."

Now, did you read that portion of the opinion?

A. No, sir; I did not.

Q. Were you ever advised as to the contents of this opinion by your attorney? A. No, sir.

Q. Is it a fact, Mr. Burton, that the occasion or real reason for your variation in your testimony in the fixing of this date, as you now claim that you have it fixed in your mind as of January 18th, is because it was shown by the receiving dates of these certificates that it could not have been signed at the time that you have previously testified that they were signed? [65]

Mr. Wynn: In other words, did that refresh your recollection?

Mr. McCormick: No. I am not asking for recollection.

Q. I am asking if that is not the reason why you changed your testimony, that you have learned now from the former proceeding that your dates so fixed in the best of your recollection as you then gave it was an impossible date as far as this signature, genuine signature of Lester Hurley being attached to the instruments?

A. Well, that date of receiving by the Edison Company, I knew it could not have been in February when it was received before the 1st of February.

Q. You seem to have overlooked some of the dates that appear upon those instruments. I will

(Testimony of George E. Burton.)

call your attention specifically to them: Received January 22, a.m., received February 1, a.m., received February 18, a.m. Now, you will notice that the first date upon which these instruments were received was January 22, a.m., 1929.

A. Yes, sir.

Q. Now, the funeral occurred on the 19th?

A. That is correct.

Q. That was Saturday? A. Yes, sir.

Q. And you say it was 2:30 o'clock in the afternoon? A. Yes, sir. [66]

Q. The next day was Sunday?

A. Correct.

Q. Monday would have been the first date, would it not, at which this matter could have been transacted in the bank following the 19th?

A. That is correct.

Q. So that, having that fact, from that fact from your former understanding, do you now desire to tell the court that you are all wrong and that your testimony given in all of these depositions on three different occasions in which you fixed the time, and as close as you could, between January 19th and February 19th is to be disregarded and that you now know the time at which these instruments were signed?

A. Well, I have come to the conclusion that it was before the 22nd of January, from what information I gathered now on these certificates.

Q. Now, Mr. Burton, your mother had been

(Testimony of George E. Burton.)

married to Mr. Price for a number of years, had she not?

A. They were married in 1916.

Q. Did they maintain a harmonious relationship during their married life? A. They did.

Q. Did you have a high regard for William Price? A. I sure did. [67]

Q. And from what you observed did your mother have a high regard for him? A. She did.

Q. Was your mother grieving and very much disturbed by reason of the passing of William Price?

A. At the beginning she was; yes, sir.

Q. At the beginning. Well, what do you mean by the "beginning"; how long did it last?

A. Well, she cried and took on very like most persons do in a bereavement of that kind.

Q. Was she still grieving about the situation at the time that the body was returned to Kansas City for burial?

A. Well, not as much as she did at first.

Q. Not as much? A. No.

Q. You, I suppose, endeavored to comfort your mother? A. I did.

Q. And you were with her practically all the time after she arrived in Kansas City, were you?

A. Well, no; not all the time I was not.

Q. Well, a great deal of the time?

A. Well, she stayed at my home there for over a month, I think until March.

(Testimony of George E. Burton.)

Q. Now, you want to tell the court that before this husband that has just departed, just shortly prior departed [68] this life, was buried that you and your mother went down to the bank and took action with respect to the transferring of the property that was really received and secured from him before he was laid away in his grave, is that right?

A. That is true.

Q. Now, will you state, Mr. Burton, whether or not any communication was made between yourself and your mother or either one of you and Mr. Alberti of the Brotherhood State Bank before you returned to Kansas City on the 17th of January?

A. I believe that I did write Mr. Alberti a letter telling of Mr. Price's death. I am not positive.

Q. Did you mention anything with respect to the fact that you had found stock in the name of Lester Hurley and ask for his advice?

A. No, sir.

Q. How long had you known Mr. Alberti?

A. Oh, I guess I had known him for 35 years.

Q. A very good friend of his?

A. Well, he was a neighbor of my first wife's mother, living across the street.

Q. Well, did you consider him a good friend?

A. In the early part I just knew him. He was a good friend of mine later on, because I done banking at the Brotherhood State Bank for a good many years before Mr. [69] Price's death.

Q. So you were well acquainted?

A. I was well acquainted with him.

(Testimony of George E. Burton.)

Q. Now, when your mother got back to Kansas City in your company, returning the body of William Price for burial on the 17th, did she communicate with Mr. Alberti about this matter?

A. Yes, sir.

Q. And when did she first communicate with him?

A. I think it was the next day, or the day that we arrived in Kansas City with the body.

Q. You think she went right down then to see Mr. Alberti?

A. It is only about three blocks from where we reside.

Q. Well, did you go with her?

A. I don't remember that I went with her; no, sir.

Q. So you don't know except from your general recollection as to whether she went or not, but you think she did?

A. I think she did; yes, sir.

Q. So she was there the very first day that she returned to Kansas City to consult with Mr. Alberti?

A. I don't know whether it was the first day or the second day, or whether a conversation over the phone or not. At that time, why, naturally, making the funeral arrangements and all, we were pretty busy. [70]

Q. You had some considerable matters in that regard to take care of, didn't you?

A. I certainly did; yes, sir.

(Testimony of George E. Burton.)

Q. And your mother was interested in those arrangements, I take it?

A. Yes; but she left it up to me in regard to seeing the undertaker and so forth.

Q. It is your best recollection, however, that she saw Mr. Alberti on one occasion or communicated with him before you went down to the bank altogether, as you stated?

A. No; I don't know exactly whether she had any communication with him. She might have talked to him on the phone or she might have went down.

Q. Well, do you have any knowledge or information as to whether she did or not?

A. No; I have not.

The Court: We will take the morning recess at this time. Five minutes.

(Short recess.)

Q. (By Mr. McCormick): Mr. Burton, I will further ask you as to whether these questions were asked and these answers given in your deposition of September 16, 1944.

“Q. Did you talk with Mrs. Price, your mother, concerning this supposed error that existed?

“A. I don't remember any conversation but she [71] wanted to know what to do and I advised her to go down and see Mr. Alberti at the Brotherhood Bank.

“Q. Did she tell you anything about the

(Testimony of George E. Burton.)

nature of the occasion for the error that you say existed?

“A. She didn’t say any occasion. She said it was an error and his name was not supposed to be on there.

“Q. What, if anything, did you say to your mother when she said it was an error? What advice did you give her?

“A. Well”——

Mr. Wynn: Mr. McCormick, “if any”?

Mr. McCormick: “If any”?

“A. Well, after she had been told by Mr. Greenhouse to have Lester sign that stock back because of the transfer that would be—was made, and it would be on the books of the company, and I advised her to go to see Mr. Alberti in the Brotherhood State Bank.

“Q. Did she go to see Mr. Alberti at the Brotherhood State Bank? A. She did.

“Q. And when was that?

“A. I don’t remember the exact date but it was along between the 20th of January and the 1st of March.” [72]

Q. Those questions were asked and those answers were given? A. Yes, sir.

Q. These further questions:

“And you were with her at that time?

“A. I don’t remember whether I was with her the first time but I was with her at one time after.

(Testimony of George E. Burton.)

“Q. And did you hear the conversation between Mrs. Price and Mr. Alberti?

“A. Well, I was just in there. I don’t remember the exact words that was said or how the conversation went.

“Q. Do you know in substance what the conversation was?

“A. Well, I know she was there to get his advice on the transfer of the stock.

“Q. And do you know what advice he gave her?

“A. No; only the advice that she had had from Mr. Greenhouse of the Southern California Edison Company was to have the stock transferred back; that it was an error.

“Q. Now, in this connection I am going to ask you, Mr. Burton, just to relate all the conversation that you remember with Alberti or in your presence between Alberti and Mrs. Price at this occasion or [73] any other occasion.

“A. Well, I don’t remember the exact language or conversation passed between them.

“Q. Can you give the substance of the conversation?

“A. It was in regard to the transfer of stock.

“Q. All right. What was said, what was done?

(Testimony of George E. Burton.)

“A. I don’t know. I don’t remember what was said.

“Q. What was the substance of what was said?

“A. Well, it was the advice she had been given by Mr. Greenhouse to transfer the stock back; it had been in error.

“Q. Didn’t she tell him what the nature of the error was?

“A. I suppose she did.

“Q. But you don’t recall anything about that?

“A. I don’t recall what was said.

“Q. What was Mr. Alberti stating? What did he say?

“A. I don’t remember his statement.

“Q. You don’t remember the substance of his statement, either, is that right?

“A. I don’t remember the substance. I don’t remember any substance only it was in regard to the stock, that is all. [74]

“Q. Just a discussion, but you don’t remember what the discussion was?

“A. Well, I knew the question was of the transferring of the stock back.

“Q. Now, what was done there at that time, if anything?

“A. Well, there was my wife and my mother, Lester and myself, we all signed that stock.

(Testimony of George E. Burton.)

“Q. Well, that was at this occasion when you say that you first went to see Mr. Alberti?

“A. I don’t remember whether it was the first time we went to see him, but it was when we all got together.

“Q. Well, now, I am confining you to this first occasion when your mother, you say, went to see Mr. Alberti and you went along. Mr. Hurley was not there with you at that time, was he?

“A. I didn’t say I was with her the first time she went. She might have been there before me.

“Q. Well, anyway”——

Mr. Wynn: “Before without me”?

Mr. McCormick: “Without me.” I beg your pardon.

“Q. Well, anyway, you were with her at one time?

“A. At one time I was; yes.

“Q. That was the early part of ’29? [75]

“A. It was.

“Q. At this occasion that you went with her who else was along?

“A. Well, the only time I was there, there was Lester and my wife and my mother and myself.

“Q. And was that the time when she said to Mr. Alberti that there was an error in the stock?

(Testimony of George E. Burton.)

“A. I don’t know. She had been there before.

“Q. She had been there before?

“A. She had probably been there before and talked the matter over with him.

“Q. But you were not with her that you remember when she was there before?

“A. No.

“Q. Now, you say that upon the occasion which you remember of being there other parties were with you. Who else, what were these other parties?

“A. Well, there was my deceased wife and my mother and Lester Hurley.

“Q. What was her name?

“A. Her name was Cecelia Burton.

“Q. Who else?

“A. My mother, Mrs. E. J. Price, Lester Hurley, and myself.

“Q. Anybody else that was there present at the [76] time of this occurrence that you are now referring to?”

Mr. Wynn: “No, sir. Might have been a stenographer.

Mr. McCormick: “No, sir; might have been a stenographer sitting on the side there or something.

“Q. Mr. Alberti was there?

“A. Yes.”

Those questions were asked and those answers given? A. Yes, sir.

Q. Continuing:

(Testimony of George E. Burton.)

“Q. Now, when Mrs. Price went in to see Mr. Alberti on this occasion what did she say to him?

“A. Well, I don’t remember just the exact words that was said. It was in regard to the signatures put on that stock.

“Q. Don’t you remember anything that was either said by her or said to her by any of the parties there?

“A. Well, she said, ‘Here, that is Lester and here is George.’

“Q. What time of day was this?

“A. I don’t remember the exact time. It was before 3:00 o’clock in the afternoon.

“Q. Was it in the morning or the afternoon?

“A. I don’t remember the exact time. I don’t know what time of day it was, no. [77]

“Q. Where was this? Where is the bank located? A. 8th and Minnesota.

“Q. Now, in whose office did this occur?

“A. It occurred in the bank. Mr. Alberti’s desk is just inside of the door.

“Q. All right. Did you sit down when you went in?

“A. Well, we stood for a minute and then there was seats provided.

“Q. And where were you sitting, by this desk?

“A. We were all there together.

(Testimony of George E. Burton.)

"Q. Were you seated or were you standing?

"A. Yes, we were seated.

"Q. And who produced the stock?

"A. Mother had it in her possession.

"Q. What did she do with it?

"A. Well, she put it down on the desk there.

"Q. Gave it to Mr. Alberti?

"A. She did.

"Q. And what did Mr. Alberti do or say?

"A. Well, I don't know the exact words he said.

"Q. I am not asking for the exact words. If you can give the substance of it, it will be satisfactory.

"A. Well, it was there for them to be signed and we signed it. [78]

"Q. Well, what was said to Mr. Hurley, any statement made by anybody?

"A. Well, I suppose he just said, 'Here, Lester,' and he signed his name to it.

"Q. Who signed first?

"A. Well, I don't know exactly; I think that Mother did.

"Q. Do you know who signed next?

"A. Well, it might have been me; I think it was.

"Q. And then Mr. Hurley signed last?

"A. Yes.

"Q. Now, did you all use the same pen?

(Testimony of George E. Burton.)

“A. Well, I am not positive about it, but I believe we did.

“Q. Now, who witnessed your signature?

“A. Well, I think Mr. Alberti witnessed them all.

“Q. You think he witnessed all of the signatures?

“A. My wife was there, too. She witnessed some of them, I think. I am not positive.

“Q. You know, I suppose, that there are certain parts of this assignment which you signed that was in typewritten form?

“A. What?

“Q. There was a part of this assignment on the back of these certificates that was filled with [79] typewritten form? A. Yes.

“Q. Was that filled in before you signed?

“A. It was.

“Q. And it was before any one of you signed? A. I presume it was; yes.

“Q. Well, do you know?

“A. Well, I am positive it was.

“Q. Who filled that in, that is, the typewritten portion?

“A. The stenographer there, I presume.

“Q. Well, did you see her?

“A. Well, she had a typewriter there.

“Q. It had not been done before you got there? A. No.

“Q. And it was not done afterwards, after the signing occurred?

(Testimony of George E. Burton.)

“A. Not that I know of. It was on there when we signed it.

“Q. On there when you signed it. What other documents, if any, were signed there that day by either you or your mother or Mr. Hurley?

“A. There was none that I know of.

“Q. Was there any other stock transferred that day or signed by you or Mrs. Price on that particular [80] day that Mr. Hurley is supposed to have signed this stock?

“A. No.

“Q. Who made the arrangements, if you know, for Lester Hurley to go to have this stock signed?

“A. Well, I don't know. Mother made the arrangements sometime.

“Q. Did you ever talk to him about the stock? A. No.

“Q. Did you see Lester Hurley frequently between, we will say, November of 1928 and March of 1929?

“A. Well, I think he attended Mr. Price's funeral and was one of the pallbearers.

“Q. And how many times would you say that you saw him during that period?

“A. Well, I don't suppose over once or twice.”

Q. Were those questions asked and those answers given? A. They were.

(Testimony of George E. Burton.)

“Q. Did you talk to him at all about this stock, about the transferring of it?

“A. No. That was matters of business. I didn’t handle it.

“Q. You never mentioned it to him?

“A. I don’t remember ever mentioning it to him; no.” [81]

Those questions were asked and those answers given? A. Yes, sir.

Q. Now, Mr. Burton, you have testified on direct examination that Mr. Hurley signed these seven assignments and irrevocable powers of attorney in the Brotherhood State Bank? A. Yes, sir.

Q. And you say that he signed dividend order 12742, Plaintiff’s Exhibit——

Mr. Wynn: 10.

Q. (By Mr. McCormick): ——Plaintiff’s Exhibit 10, I believe, at your residence, is that right?

A. At 1046 Ann Avenue, Kansas City, Kansas.

Q. And Plaintiff’s Exhibit 13 at the Union Station? A. Yes, sir.

Q. In Kansas City, Missouri?

A. Yes, sir.

Q. Now, Mr. Burton, in view of your testimony that you had only seen Lester Hurley twice, once or twice from November of 1928 to March 1st of 1929, explain to the court how these various instruments were signed on these separate occasions, if that is true.

A. Well, now, I said once or twice. He was a

(Testimony of George E. Burton.)

nephew and with the children quite a number of times and visited the house. Now, I might not have seen him. He might [82] have been there when I was not at home, and I can't recall only once or twice that we were at the bank together. That is what I had reference to, but as far as——

Q. You did see him the day of the funeral, didn't you? A. Yes. [83]

* * *

Q. Well, you did give attention to this dividend order No. 12743, Plaintiff's Exhibit No. 13, since this controversy arose in 1944, didn't you?

A. The question again, please?

Q. Did you give attention to this dividend order or make any effort to secure either the original or a copy of it? A. No.

Q. Oh, you didn't? A. No, sir.

Q. When was the first time you saw either the original or a copy of the Plaintiff's Exhibit 13?

A. Was it introduced in the other trial?

Q. Well, do you know? [84]

A. No; I do not.

Mr. Wynn: I will stipulate that it was not introduced on the other trial.

Mr. McCormick: That is correct; it was not introduced in the other trial.

Mr. Wynn: It was not involved in the other trial.

Q. (By Mr. McCormick): However, at the time of the former trial you knew this dividend

(Testimony of George E. Burton.)

order had been signed or you claimed it was signed, didn't you?

A. I remember the order was sent to me by Mother to be signed but I had not signed it.

Q. And you also remember or claim to remember that the former dividend order No. 10, Plaintiff's Exhibit 10, was sent to you also, do you not?

A. Yes, sir.

Q. Do you mean to say that you didn't have any recollection until you saw this dividend order, Plaintiff's Exhibit 13, as to who witnessed it until after you saw the dividend order?

A. I didn't remember. I knew that Helen had signed one and I remember that we had got one of the red caps at the depot, but I couldn't recall just exactly who it was at the time.

Q. Did you try to refresh your recollection or ascertain anything with respect to the matter either through [85] your attorneys or yourself?

A. No, sir.

Mr. Wynn: When, when?

Q. During this period of the controversy, from the time the first suit was filed in the District Court of Kansas.

Mr. Wynn: Now, with reference to Exhibit 13 or 10?

Mr. McCormick: With respect to Exhibit 13.

A. I didn't inquire or make any inquiries at all.

Q. When you received these dividend orders, Plaintiff's Exhibit 10 and Plaintiff's Exhibit 13, from your mother did you read them?

(Testimony of George E. Burton.)

A. I don't think I read everything that was on there; no, sir.

Q. Well, did you read them at all?

A. I did.

Q. Did you feel you had any interest in this matter?

A. The letter that my mother wrote to me explained and said, "Have Less sign these and you sign them and return them to me. That will be my income."

Q. Now, I am asking you, however, if you had any interest in this matter, felt that you had any personal interest or desire to know anything about it?

A. Well, I had a personal interest in it to know that my mother was going to be provided for. [86]

Q. And yet do you desire to tell the court that, having received an instrument of this character, you did not read it in its entirety?

A. I read all of those names here, yes; I read that part of it.

Q. Each of them?

A. Yes, sir. [87]

* * *

Q. In this deposition taken on September 14, '44, I will ask you to state whether this question was asked you—these questions asked you and these answers made.

"Q. To clear up the record, Mr. Burton, I want you to state whether or not you learned of the existence of these 575 shares of stock

(Testimony of George E. Burton.)

that was issued in the names of Burton, Price and Hurley before or after the death of William Price?

“A. It was after the death before I knew anything about it.

“Q. I will ask you this, Mr. Burton: State whether or not you knew of any stock having been issued in the name of Price, Burton and Hurley prior to the death of William Price?

“A. I did not.” [89]

* * *

Mr. McCormick: Yes; did you so testify, Mr. Burton? A. Yes, sir. [90]

* * *

Q. Now, Mr. Burton, I direct your attention to the endorsement appearing upon each of the Plaintiff's Exhibits from 1 to 7, inclusive, and ask you to note if you observe that there are two separate, distinct guarantees of signatures appearing thereon, one of which guarantees the signature of George E. Burton and Elizabeth J. Price, and the other guarantees the signature of Lester Hurley? Now, do you know why there were two separate guarantees placed on those instruments?

A. No; I don't knew of any reason why, with the exception that those instruments were sent to the California Edison Company without the signatures being guaranteed, with only my wife's signature being on there as witnessing the signatures.

(Testimony of George E. Burton.)

Q. All the signatures were on there and placed on there, I believe you say, upon this one occasion when you were [93] at the bank?

A. Yes, sir.

Q. They were all put on there at that time?

A. Yes, sir.

Q. And were they all placed on there in the presence of Mr. Alberti?

Mr. Wynn: Now, by "all of the signatures" are you referring to all three of the Alberti signatures?

Mr. McCormick: I am referring to the assignors, all three signatures, all three signatures "Elizabeth J. Price," "George E. Burton," and "Lester Hurley."

Q. They were put on practically simultaneously, weren't they? A. They were; yes, sir.

Q. And in the presence of Mr. Alberti?

A. Mr. Alberti was there, my wife, my mother, and Mr. Burton.

Q. All right. Now, the signatures being on the instrument, do you know why that there was any occasion or reason for two separate and distinct guarantees of the two signatures in the one case, and a guarantee of the other signature in the other case? A. I know of no reason. [94]

* * *

The Court: It is covered by your pre-trial stipulation. You admit that statement. The documents were sent to the defendant without any signatures guaranteed at all in the first instance.

(Testimony of George E. Burton.)

Mr. McCormick: That is true. [95]

The Court: Then the defendant sent them back, and then this man's name of the Brotherhood State Bank—what is it?

Mr. Wynn: Alberti.

Mr. McCormick: Alberti.

The Court: —Alberti guaranteed the Burton and Price signatures, and then they sent them back to the defendant, the defendant returned them to the bank, and then the guarantee of the Hurley signature was inserted there. That is what the pre-trial stipulation says, as I read it.

Mr. McCormick: That is true, your Honor; and what I am trying to bring out at this time in this connection is that Mr. Alberti, at the time that you were at the bank, state whether or not he was requested by either yourself or Mrs. Price at that time to guarantee these signatures.

A. No; there wasn't any question. Mr. Alberti had my signature there because I was banking with the Brotherhood State Bank.

Q. Now, in fact wasn't your purpose and endeavor and desire, from the statements or information given you by your mother, to endeavor to obtain the transfer of this stock without having these signatures guaranteed at all; wasn't that right?

A. No, sir.

Q. But you have no explanation as to why they were [96] guaranteed in the separate manner in which they appear from the instruments?

A. No, I haven't.

(Testimony of George E. Burton.)

Q. What, if any, consideration, Mr. Burton, did you ever pay to Lester Hurley for making this purported assignment?

A. I never. I never gave him anything. The only thing that I gave him was a \$5.00 check for a Christmas present.

Q. Do you know of any consideration, benefit of any kind or character that Lester Hurley ever received either from you or from your mother or any source as consideration for this transfer?

The Court: You mean for executing any of these documents?

Mr. McCormick: That is right.

The Court: Dividend orders or the assignments of stock?

Mr. McCormick: That is right, your Honor. That is what I want.

A. For any purpose, not for gift or anything?

The Court: Counsel is asking you whether you know of anything at all of value or any consideration whatever either given or promised to Lester Hurley for signing the assignments on Exhibits 1 to 7 or for signing the dividend orders, [97] Exhibits 10 and 13?

A. No; I know of nothing. [98]

* * *

Wednesday, November 3, 1948—10:00 A.M.

Mr. Wynn: I will call Mr. Greenhouse.

FRANK L. GREENHOUSE

called as a witness by defendant, being first sworn,
was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Frank L. Greenhouse.

Direct Examination

By Mr. Wynn:

Q. Mr. Greenhouse, what is your business or occupation?

A. Well, I am on compensation now from the Southern California Edison Company.

Q. You have previously been employed by the Southern California Edison Company?

A. Yes, sir.

Q. In what capacity?

A. Well, for the last 18 or 20 years as manager of the investment department.

Q. And you were manager of the investment department, then, in the latter part of 1928 and during 1929? A. That is right.

Q. In that capacity did you ever have occasion to meet a Mrs. Elizabeth J. Price?

A. Yes, sir. [2*]

Q. And did you meet her husband, Mr. William Price? A. Yes, sir.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Frank L. Greenhouse.)

Q. Did you ever meet Mr. George E. Burton?

A. Yes, sir.

Q. When did you first meet any of those individuals?

A. Mr. and Mrs. Price, I met them first, as I remember it, in 1924 when they came in to purchase some Edison stock, and they came in at various times after that down through the years.

Q. They were stockholders, then, in the Edison Company in the fall of 1928, were they?

A. Yes, sir.

Q. To your knowledge? A. Yes, sir.

Q. Did you have any meeting with Mr. and Mrs. Price and with Mr. Burton in the fall of 1928?

A. Yes, sir.

Q. Approximately when did that occur?

A. It was in November of 1928, around November the 19th.

Q. Where did that meeting take place?

A. In my office in the Edison Building at Fifth and Grand.

Q. Who all was present?

A. Mr. and Mrs. Price and Mr. Burton and myself.

Q. Now, will you describe to the court what occurred at [3] that meeting as you now recall it?

A. Yes, sir. They came in and they introduced me to Mr. Burton, and they had a number of Edison stock certificates with them, and Mr. Price said that they had talked it over and decided that they wished to have this stock re-issued. And I said, "In

(Testimony of Frank L. Greenhouse.)

what title?" He said, "We want it issued in Mrs. Price and Mr. Burton and"—the fellow's name, let's see, what was that?

Q. Mr. Hurley?

A. "Hurley," yes; all three as joint tenants, and asked if that was possible. I said, "Yes." And I went into great detail with them for possibly 15 or 20 minutes as to the reasons for and against having it joint tenants. And Mr. Price—he was quite an elderly man, very nervous—he said, "Greenhouse," he says, "that is all right to explain all that, but I am a pretty sick man," he says. "All I want to know about is if we have this stock re-issued into the three names, I want to be sure that if anything happens my wife will always get the dividends from the stock."

I said, "Well, as long as the company continues to pay dividends, they will, but all three parties will have to sign a dividend order so the dividends are paid to Mrs. Price." And I explained very fully to them that if they sold or transferred the stock or changed the dividend order, of course, she might be out of luck. [4]

Mr. Price, that is, he said, "Oh, I am not worrying about that. She won't change the stock or the dividend orders." He says, "If you are certain that that is the way it should be, if they all sign a dividend order that she will get the dividends as long as they are paid," he said, "we will go ahead with it."

So I had one of the clerks come in from the

(Testimony of Frank L. Greenhouse.)

transfer division and they checked on the stock certificates and they gave Mr. Price a receipt for them, and I wrote up a dividend order and I said, "Now, all three of you will have to sign this dividend order." I wrote it up and the places were all there for them to sign. I said, "Now, you please get this back to us as soon as possible because when the first dividend is issued on the re-issued stock, we want to have it so as to go to Mrs. Price." And they took the dividend order with them and it was not mailed back to me but it was mailed back to the investment department of the company in a reasonable course of time, in a reasonable length of time, as I remember it. And that is all there was really to that story at that time.

Q. I hand you now, Mr. Greenhouse, Plaintiff's Exhibit No. 10 in evidence in this case and ask you to inspect the same.

A. Yes, that is the dividend order that I made up for them to take with them to get properly signed and returned to [5] the company.

Q. You made that up on the occasion of this meeting with the three persons you have now mentioned?

A. That is right; on November the 19th, 1928, when they turned the stock in.

Q. What portion, if any, of that document is in your handwriting?

A. I would say all of it except the three signatures and addresses, and a witness named "Helen

(Testimony of Frank L. Greenhouse.)

Burton'' of 1046 Ann Ave., K. C., Kans.'' All the rest of it is in my handwriting except the three signatures.

Q. When that was received again by the Edison Company did it come to your attention?

A. No, sir. It would come direct to the company to the investment department. It shows it was received by the company December the 11th. It has the regular stamp on it.

Q. You fixed the date of your meeting with the three persons as November 19, 1928. How did you determine that was the date?

A. Well, several methods, very easily. Of course, first of all, as I say, I knew Mr. and Mrs. Price for a number of years, and when he came in he was quite a sick man, very excitable, and it stands out in my mind how thoroughly I went into the advantages and disadvantages of joint tenancy, and so forth. Then I had the transfer girl come in to give [6] the receipts, also dated November the 19th and I made this appear on the 19th and remember doing it definitely, and apparently it was received back by the company on the 11th, but not by me. It apparently came in with hundreds of other mail on that day.

Q. My next question was going to be: On the document I note a stamp marked in the lower right-hand corner "Dec. 11, 1928," and I was going to ask you what that indicates, whether it indicates the receipt by the Edison Company or in filing or disposition of it.

(Testimony of Frank L. Greenhouse.)

A. Well, I would not be positive. I feel very certain that that is a small stamp put on by the transfer clerk immediately it is received. It is on all our dividend orders that I know of. So I think that is what it refers to, the date received by the Edison Company. And the stencil stamp on it also shows that it was classified on December the 11th and the "Stencil Cut" on December the 11th, and checked by several on December the 11th.

Q. Yes. Now, that stencil would mean what?

A. Ordinarily, I think that would refer possibly to a dividend order. This dividend order is filed and they cut a stencil showing the dividend order, how the checks are to be issued.

Q. And then that information is placed on a card or Addressograph?

A. An Addressograph. It is a permanent record. [7]

Q. So that thereafter dividends then are paid pursuant to that record made up?

A. Absolutely, yes, sir.

Q. Do you recall any other meeting or conversation with any of the persons mentioned, that is, Mr. or Mrs. Price or Mr. Burton with reference to the stock subject to that dividend order?

A. No. But during this first meeting, Mrs. Price spoke up and said she had some stock in her name. She wanted it put in this three joint tenancy title the same as the stock that they just brought in.

Q. She said that at this first meeting?

(Testimony of Frank L. Greenhouse.)

A. Yes, sir. And I said, "Well, have you got your stock certificates with you, Mrs. Price?" She said, "No, but I can get them within the next day or so." So she came in about three days later with all the rest of the stock that was in her name in some joint tenancy with Mr. Price, that really belonged to her, and they put all those issued in Mrs. Price and Burton and—what is his name?

Q. Hurley? A. —Hurley, yes.

Q. That occasion, you say, was a few days after the first meeting? A. Yes, sir.

Q. Did Mr. Price accompany her at that [9] time? A. Yes, sir.

Q. And did Mr. Burton accompany her?

A. Yes.

Q. Do you recall the number and type of shares that were involved in this second transfer?

A. I think in Mrs. Price's name there were probably 191 shares of Series B 6 per cent preferred stock and probably around 80 or 88 shares of the common stock.

Q. You have, of course, referred to the records of the company to refresh your recollection as to these amounts and the dates?

A. Yes, sometime ago.

Q. Where did that meeting occur?

A. In the investment department. You mean the second meeting?

Q. Yes.

A. Yes, in the investment department.

(Testimony of Frank L. Greenhouse.)

Q. Do you recall any conversation at that time relative to the dividends on this second block or lot of stock?

A. Yes. Yes.

Q. What was said and by whom?

A. They did not come into my private office on the second meeting. They asked for me—we were very, very busy—and I went out to the counter of the transfer division and one of the transfer clerks issued the receipt to them, and then [9] before they left I said, “Of course, now you will have to have a similar dividend order so that the dividends go to Mrs. Price that you took from me the other day.” So I wrote up another one for them and told them to please get it signed and return it as soon as possible.

Q. I hand you now Plaintiff’s Exhibit No. 13 in this action and ask you to inspect the same.

A. Yes. That is dated November the 22nd. That is the date we gave them the receipt for the 88 shares of common and 191 shares of Series B preferred; and that is all in my writing except the signatures and a witness here says “R. N. Jones, 3829 Garfield Ave., K. C. Mo.” All the rest of it is in my writing.

Q. And did you prepare that document in the presence of Mr. and Mrs. Price and Mr. Burton.

A. Yes, sir; right at the counter.

Q. To whom did you deliver it, if you recall?

A. The first one on November the 19th I delivered to Mr. Price, but the second one, when Mrs.

(Testimony of Frank L. Greenhouse.)

Price came in with hers, I delivered it to her as it happened.

Q. Although Mr. Price was present?

A. Oh, yes, sure; but we made the receipt to Mrs. Price because it was her stock being turned in the second time for transfer.

Q. Subsequently, the second dividend order, which is [10] Plaintiff's Exhibit No. 13 was returned to the Edison Company?

A. That is the November 22nd dividend order, yes, 12743, yes. That came back at the same time, apparently, December the 11th, as the other; so they probably took them on with them and went to Kansas City and got the third signature, and from there returned them by mail to us. You see, they are both the same, although this is dated November 19th and that is three days later.

Q. Yes, and the date "Dec. 11" is the stamped date you find in the lower right-hand corner of each dividend order?

A. That is right. That is right, and also on the stencil cutting.

Q. Now with reference to the stock——

The Witness: This is the stencil that they stamped on there and put the dates in.

The Court: Just a moment. Speak louder so the record will get what you are saying.

The Witness: Oh. This rubber stamp here shows——

The Court: That is to the right-hand side?

(Testimony of Frank L. Greenhouse.)

The Witness: To the right-hand side of the dividend order.

The Court: Referring to Exhibit 10.

The Witness: Yes. Shows that it was received on December the 12th (11th) and classified.

The Court: December the 11th, isn't it?

The Witness: December the 11th. Pardon [11] me.

The Court: And the stencil was cut by another clerk?

The Witness: On the same date and was checked by still another clerk on the same date; and that also ties in with the stamped date at the bottom right-hand corner on this particular dividend order.

The Court: Do I understand that you yourself wrote in the words——

The Witness: Yes, sir.

The Court: ——“Nov. 19th, 1928”?

The Witness: Yes, sir.

The Court: The name “Mrs. Elizabeth J. Price”?

The Witness: That is right.

The Court: And the name “Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley”?

The Witness: That is right.

The Court: And “(575 shares)”?

The Witness: Yes.

The Court: And all that appears in pen and ink on Exhibit 10 in the body of it?

The Witness: Yes, sir.

(Testimony of Frank L. Greenhouse.)

The Court: Did you write that on there prior to the time any signatures were placed on it?

The Witness: Yes, sir. And there the address for sending the dividends is in my handwriting.

The Court: You wrote that on at that [12] time?

The Witness: Yes, sir. And I gave that particular one to Mr. Price to be sure and have all three signatures on there and return to the company.

The Court: Is your testimony the same with respect to your handwriting as it appears on Exhibit 13?

The Witness: Yes, sir.

Mr. Wynn: I started to ask a question. How far, Mr. Bargion, did we get?

(Question read by the reporter as follows:

“Q. Now with reference to the stock——”)

Mr. Wynn: I will reframe the question, with the Court's permission. Referring to the stock which is the subject of Plaintiff's Exhibit No. 10 which you have before you, did you after the meeting which you have previously described have any conversation with any of the parties you met with the first time concerning that stock?

A. No, sir.

Q. Did it subsequently come to your attention that the 575 shares of stock covered by that dividend order had been actually transferred to Mrs. Price and Mr. Burton, alone, and was there a divi-

(Testimony of Frank L. Greenhouse.)

dend order prepared by you in connection therewith?

A. No. I didn't know a thing about the transfer into the two names you mention until some weeks or months after the thing had taken place, after the transaction had taken place. [13] It was handled apparently from Kansas City through regular mailing operations and handled by the transfer division as a routine matter. That is as far as the stock is concerned, I am talking now about stock certificates.

Q. I hand you now, Mr. Greenhouse, a document, dividend order form No. 13157, bearing in the lower right-hand corner stamped date "Mar. 18, 1929," purporting to be signed by Mrs. Elizabeth J. Price and George E. Burton and to be witnessed, apparently, by yourself and referring to some common stock. Upon inspecting that document can you recall the connection in which it was executed, if it was executed?

A. On this date in March of 1929.

Q. Do you know what stock that referred to?

A. No, I could not say definitely. It simply says "common" here, but apparently Mrs. Price either came in or phoned and said she wanted her checks to continue to come in the name of Elizabeth J. Price. And that is on stock that was then standing in the name of Mrs. Elizabeth J. Price and George E. Burton.

Q. Have you prior to appearing here in court

(Testimony of Frank L. Greenhouse.)

on this date inspected the records of the Edison Company to determine what stock, if any, stood in the names of George Burton and Mrs. Price at or about the time of this dividend order?

A. No, sir.

Q. Can you explain who prepared the dividend order? [14]

A. You are talking now about the one that has the date "Mar. 18, 1929"?

Q. Yes. A. This third one here?

Q. Yes.

A. That is my handwriting except the signatures.

Q. I notice the signature as a witness attached thereto. Is that your signature?

A. Yes, sir. That is just——

Q. Did those parties——

A. No. That was just guaranteeing Mrs. Price's signature.

Q. Then Mr. Burton did not appear before you at that time? A. No, sir. No.

Mr. McCormick: If the court please, it seems to me that this is really encumbering the record and I would object to this line of testimony for the reason that it has been stipulated that these dividends were paid and delivered to Elizabeth J. Price under and in pursuance of this dividend order, as well as under and in pursuance of 12743, which is a matter which is not in contest and there is no issue here at this time on which the matter has a bearing.

(Testimony of Frank L. Greenhouse.)

The Court: The defendant, I take it, is offering it for the purpose of showing the surrounding circumstances of the [15] defendant's dealings with Elizabeth J. Price.

Mr. Wynn: That is right, with all the parties in our attempt to establish the negative.

The Court: We will take the noon recess at this time. Is there any objection to resuming at 1:30?

Mr. Wynn: None, your Honor.

Mr. McCormick: None on my part, your Honor.

The Court: Very well. You will be excused, Mr. Greenhouse, until 1:30. Recess until 1:30.

(Whereupon a recess was taken until 1:30 o'clock p.m. of the same day, Wednesday, November 3, 1948.) [16]

Wednesday, November 3, 1948—1:30 P.M.

The Court: Are you ready to proceed in the Hurley matter, gentlemen?

Mr. Wynn: Ready, your Honor.

FRANK L. GREENHOUSE

(Recalled)

Direct Examination

(Resumed)

By Mr. Wynn:

Q. At the recess, Mr. Greenhouse, you had before you and were testifying with reference to a dividend order which was numbered 13157, I be-

(Testimony of Frank L. Greenhouse.)

lieve. Now, it is your recollection that that dividend order was prepared by you, is it?

A. Yes, sir.

Q. And who was present at the time you prepared it? A. Mrs. Price.

The Court: You have been over all that, haven't you, or is this a different dividend order?

Mr. Wynn: This is a different dividend order which has never been offered into evidence, your Honor.

The Court: Oh, I am sorry. I assumed it was the dividend order, one of the exhibits 10 or 13.

The Witness: Mrs. Price came in and wished to have a dividend order re-issued so the checks would continue to come to her. That was on stock that had been transferred to she and Mr. Burton sometime previously. [17]

Q. (By Mr. Wynn): Did you have a conversation with her at that time relative to that subject?

A. No. I simply had a clerk go out and look up the account to see how it stood, to see that it really was in the name of Elizabeth Price and George Burton. And she said, "I want the dividends just to come to me, Mr. Greenhouse." I said, "All right, I will make a dividend order up for you," which I did right in her presence and witnessed her signature. I said, "Will you please send this on to Mr. Burton in Kansas City and have it returned as soon as possible?" Which was the usual procedure.

(Testimony of Frank L. Greenhouse.)

Mr. Wynn: We offer this document, dividend order No. 13157, into evidence as Defendant's next exhibit in order.

The Court: What is the purpose of it?

Mr. Wynn: Completing, your Honor, the connection that the officials of the Edison Company had with the parties in this action. I mean this is in the way of a negative proof, the absence of any knowledge of any fraud.

Mr. McCormick: This dividend order is one which was stipulated as the one under which the dividends under the stock certificates 1 to 7 had been paid, so it is only cumulative in that it is the order under which they acted. I see no purpose.

The Court: Wasn't that dividend order in evidence?

Mr. Wynn: No, sir. No, your Honor.

The Court: There are three dividend orders in evidence, are there not? [18]

Mr. Wynn: My recollection——

The Court: Is this a fourth one?

Mr. McCormick: My recollection, your Honor, is that there were three in evidence, but, of course, Mr. Wynn told me otherwise.

The Court: Dividend orders 12742 and 13157 are in evidence, are they not?

Mr. McCormick: That is correct.

The Clerk: 12743.

The Court: 12742 and 12743, at least, I believe are in evidence, are they not?

(Testimony of Frank L. Greenhouse.)

The Clerk: Yes, your Honor.

Mr. Wynn: That is my recollection.

The Court: But the dividend order numbered 13157 has not heretofore been received into evidence, is that it?

Mr. Wynn: That is my distinct recollection.

The Court: Very well, it will be received at this time as Defendant's next exhibit.

The Clerk: T.

Q. (By Mr. Wynn): After the conversation you have just related with Mrs. Price did you at any subsequent date have any further conversation with her or with Mr. Burton or with Mr. Hurley concerning the 575 shares of stock in the Edison Company? A. No, sir.

Mr. Wynn: You may cross-examine. [19]

The Court: Are you positive in your recollection, Mr. Greenhouse, that you wrote into the form, the form of dividend order, the portions which you did write in pen and ink before they were taken out to be signed?

The Witness: Oh, yes, sir.

The Court: Do you have a definite recollection with respect to these particular dividend orders?

The Witness: Oh, yes, sir.

The Court: You may cross-examine.

(Testimony of Frank L. Greenhouse.)

Cross-Examination

By Mr. McCormick:

Q. Mr. Greenhouse, are you at the present time with the California Edison Company?

A. I am on compensation from the Edison Company. I am retired.

Q. When did you retire from your direct connection? A. In May of this year.

Q. I beg pardon? A. May of this year.

Q. May of this year? A. Yes, sir.

Q. You were with the California Edison Company then in 1945? A. Yes, sir.

Q. You knew of this suit that was filed by George Burton [20] in the court of Kansas which was brought to trial in the year 1945?

A. I have heard that such a case had come up, but I had nothing to do with it.

Q. At the time that that suit was pending in course of litigation were you at any time consulted by the attorneys representing the California Edison Company as to your knowledge or understanding as to this transaction?

A. No, sir; not that I recollect.

Q. You were not asked anything about it by any of the attorneys as to what the situation was with respect to these stock certificates which are designated here as 1 to 7 and were transferred supposedly on the signature of Lester Hurley which was charged to be a forgery?

(Testimony of Frank L. Greenhouse.)

A. Oh, as manager of the department, the legal department would probably have sent down and asked me to dig up all these records for them, produce everything, but I don't remember any particular question as to the authenticity of any of the signatures or anything.

Q. And you endeavored at that time to give them all the information that you had relative to this matter?

A. All that they asked for, yes, sir; the records.

Q. You were familiar with the fact, were you, that this case that is designated "Lester Hurley v. Southern California Edison Company," an issue of which is on trial in this court, [21] was pending in this court and tried here approximately two years ago? You are familiar with that fact?

A. I think I did go over with some of our legal fellows at the time, and they took a deposition of mine, very short. I forget what it was.

Q. That was the deposition that was taken in the Kansas case, was it not, Mr. Greenhouse?

A. I think it was, yes.

Q. I am referring to proceedings that have been carried on for sometime in this court. Were you consulted at all by the attorneys representing the Southern California Edison Company or any other company connected with this case relative to your knowledge and understanding and information?

A. Yes. They asked me to produce the dividend orders from my file and asked me if that was my

(Testimony of Frank L. Greenhouse.)

writing, which they knew perfectly well it was, and I said, "Sure."

Q. When did they ask you to do that first?

A. I couldn't remember that.

Q. It has been some period of time ago, has it?

A. Oh, yes.

Q. Was that prior to the time that this case was heard here in November of 1946?

A. I think so, but I would not be sure.

Q. Other than the matter of this deposition that was taken in the Kansas case, you have never been called to testify [22] in this matter before?

A. No, sir.

Q. Of course, in answer to any questions that any of the department put to you, you gave them all the information and all that you had and all your recollection concerning the matter?

A. Yes, sir.

Q. In your connection with the California Edison Company what department did you say that you handled?

A. The investment department.

Q. Is that a separate and distinct department from the transfer department?

A. Well, it covers all the various branches in the investment department. It is rather a misnomer. If I might be permitted to explain that, the primary purpose of the investment company of the Edison Company was to carry out this statutory ownership plan, which was the selling of its

(Testimony of Frank L. Greenhouse.)

stock to the consumers and its employees down through the years. Along with that, of course, they built up gradually a very large transfer department, bookkeeping department, accounting department and various other branches, so that the investment department covers all those various bureaus within the department.

Q. But ordinarily, when a matter of a transfer of stock rather than investment came into the office for attention, that [23] would not fall under your specific jurisdiction, would it?

A. No, sir; not ordinarily.

Q. Will you explain to the court as to why it was that you handled this matter of the transfer—and it was purely a transfer, was it not, Mr. Greenhouse?

A. Yes, yes.

Q. Why was that?

A. I had been 35 years with the company and I had been responsible for the sale of possibly \$200,000,000 worth of securities. Naturally, there were many hundreds, and possibly thousands, of stockholders who knew me very, very well, and they would come in year after year either to buy additional stock or to ask questions or to have stock transferred, and they preferred to deal directly with me rather than with some of the other dozens of clerks whom they probably did not know. That is the case with Mr. and Mrs. Price.

Q. With these people and that large amount of stock that you sold, they would come relative to

(Testimony of Frank L. Greenhouse.)

transfers and you would handle those personally?

A. Well, where a stockholder knew me personally and wanted my personal attention, he would ask to see me and I would take care of him, but I would ask the transfer clerks to come in and actually record receipts and see that the certificates were properly endorsed, revenue stamps on them and all that kind of stuff. [24]

Q. As I understand you, there were a great many people who fell into that class?

A. Oh, yes, surely, down through the years.

Q. How long had you known Mrs. Price, personally?

A. Oh, I should think since 1924, probably.

Q. Do you recall her having come to make investments or to take any matter up with you on various occasions over the years from 1924 to 1928?

A. Oh, yes, several times.

Q. Several times?

A. She and Mr. Price came in to buy additional stocks and take care of their rights that were issued on the stock. And they were both very elderly people and they would call me on the phone and say, "Do you think this is safe and that is safe?" Outside securities, I mean, and I would always have to tell them that I could tell them about Edison Company stock but no others.

Q. Now, Mr. Greenhouse, I believe you say that you remember distinctly explaining in some detail the meaning of joint tenancy on this occasion when they first came to see you? A. Yes.

(Testimony of Frank L. Greenhouse.)

Q. And the method that would be necessary and essential to be followed in order for the dividends to be paid to Mrs. Price?

A. That is correct. [25-28]

Q. This stock so happened to be issued in the names of the three parties, Elizabeth J. Price, George Burton, and Lester Hurley on the date that they first came to you, is that correct?

A. On November the 19th, 1928?

Q. November the 19th? A. Yes.

Q. Did you, at that time, explain to Mr. and Mrs. Price that it would be essential that they would have a dividend order signed by all three of the parties and without which it would be impossible for your company to pay dividends to Mrs. Price?

A. Yes, I did. I explained to all three of them in my presence, each.

Q. You explained that to them at that time?

A. Oh, yes, very thoroughly.

Q. Did you also explain on that occasion that it would depend entirely upon the thoughts and desire on the part of this party, the third party who was not there? I believe you said Mr. Burton was there? A. Yes.

Q. But the third party who was not there, as to his will and desire as to whether or not a dividend order would be so signed?

A. No. That—— [29]

Q. And that he could not be compelled to give

(Testimony of Frank L. Greenhouse.)

up his interest in dividends unless he so desired?

A. No; I don't think anything like that was discussed.

Q. You do not think you discussed that?

A. I don't think so. Of course, this is 20 years ago and it was a very long conversation that we had.

Q. Yes. Mr. Greenhouse, did you mention to them at that time that in the event a dividend order was signed, that it would be subject to examination upon the will of any one of the parties signing it?

A. Yes, sir. I explained that very fully to Mr. and Mrs. Price and Mr. Burton. They understood that.

Q. So there would be no certainty that even though a dividend order was signed it would continue to carry that with it to Mrs. Price?

A. Yes, sir. I explained that very distinctly to them.

Q. You remember that definitely?

A. Yes, sir.

Q. At the time you were discussing these matters with these people in this manner that you have referred to did you make any inquiry as to who Mr. Hurley was?

A. No. They came in and sat down after they introduced me to Mr. Burton, and Mr. Price, he was quite excited. He says, "My wife and I have decided to have this stock issued in these three names," and he gave me the names. [30]

(Testimony of Frank L. Greenhouse.)

Q. You are quite sure Mr. Burton was there?

A. Oh, yes, absolutely.

Q. But did you make any inquiries as to Mr. Hurley at that time?

A. Well, Mr. Price said he was some relative of his that he wanted on there, he lived in Kansas City, I think. I don't know whether it was Kansas or Missouri, but I think he did mention that he was a relative, all right.

Q. Did he tell you that he was her grandson?

A. No.

Q. And you made no inquiry as to who he was or what their relationship was?

A. No, not after he told me that he was a relative.

Q. A relative.

A. Why should I ask him a question like that?

Q. But what the evidence of relationship was you did not ask for? A. No.

Q. Did you ask him at all as to what the age of this party was?

A. No. I asked him if all these parties could sign contracts. He said, "Yes." And Mrs. Price said that, too.

Q. And you remember that? A. Yes.

Q. Now, if the record shows in this case that Mr. Burton [31] has heretofore testified under oath on several occasions that he was not present at the time of this conversation that you have referred to here, would you say that was just incorrect or untrue? A. Absolutely incorrect.

(Testimony of Frank L. Greenhouse.)

Q. You have before you dividend order 13157?

A. I think Mr. Wynn took that.

Q. Is this your signature appearing upon this instrument?

A. Yes, sir.

Q. And you desire to tell the court that the signature in your handwriting there is the same as the handwriting in which "Mrs. Elizabeth J. Price and George E. Burton" appears?

A. You mean up here?

Q. That is right. A. Yes.

Q. The body of the instrument and signature which appears here?

A. Yes, except I used a blotter in here at the end and it looks a little lighter than the other. That is the only difference.

Q. You do concede that it was written with different ink?

A. No, not necessarily. It might have been. I had several pens and correspondence on my desk and several pens, which, being under high pressure, I would pick up one or the [32] other, whichever suited me.

Q. Mr. Greenhouse, I notice a mark here "Mar. 18, 1929." I think you testified on your direct examination that that indicates a date when the instrument is received.

A. Yes. I think that was probably true at that time.

Q. Now, I will ask you to state with respect to this certification stamp over here if the instrument was received on March 18th, what is the meaning

(Testimony of Frank L. Greenhouse.)

of these dates here that read March 13th, March 15th, and March 16th, which would all antedate the March 18th?

A. Well, it did go through the machinery on that date and finally was put in the file on March 18th, two days later, as completed business, I would imagine.

Q. Then it is your statement that this does not indicate the date when the instrument was received?

A. Not necessarily, but completed probably.

Q. I understood you to say a moment ago that it was the date when the instrument was received.

A. I might have said so, but to go back 20 years ago and ask what one little stamp means, when there is thousands of them used, it is pretty hard to say.

Q. Your memory is just as good with respect to stamps as it is with respect to what somebody came in and told you in great detail what they wanted done or did not want done with stock of 20 years ago? [33]

A. That is very different.

Q. That is very different?

A. Yes, sir. When you are talking with two human beings and discuss half an hour and discuss things from one end to another, than to see a little stamp on here, which probably I have nothing to do with—it all goes through routine—I would not be quite as sure about that. But I am sure it was put through on these dates here shown on this, which is practically the same date. This is probably the finishing date right here when filed.

(Testimony of Frank L. Greenhouse.)

Q. Then you think it was probably the finishing date rather than the beginning date?

A. Yes, although it might have gone through and been finished on the same date, as far as that is concerned, on some of them.

Q. With respect to the method of the stamping and with respect to the method of handling stock dividend orders, that was a matter which had been under your supervision and under your direction?

A. No.

Q. And with which you were familiar for years?

A. No.

Q. It was not?

A. The internal records and everything were taken care of by the assistant secretary in the investment department, and [34] he could probably explain that particular item that you questioned there.

Q. Did you learn, Mr. Greenhouse, as to when William Price died?

A. Oh, I suppose I must have heard about it indirectly, but when, I could not say; probably a considerable time after he died.

Q. Didn't Mrs. Price inform you rather promptly of his death after it occurred?

A. Apparently not, no, not me directly.

Q. Not that you remember? A. No.

Q. Now, I believe you have testified that you had two conversations with Mr. and Mrs. Price—the first one on November 19, 1928?

A. Yes.

(Testimony of Frank L. Greenhouse.)

Q. And then one a few days later?

A. That is right.

Q. How many days later would you say?

A. Three days later.

Q. Three days later? A. Yes.

Q. And that was with respect to likewise a transfer of stock?

A. Preferred stock and some common belonging to Mrs. [35] Price, herself.

Q. Aren't you familiar with the fact that these other transfers to which you refer did not occur several days later but occurred the next day?

A. I don't think that is so.

Q. Well, if the stock certificates were issued on that day, then your memory would be corrected, is that right?

A. Well, I know the receipts given them for this second bunch of certificates was dated three days later when they came in.

Q. You have checked those to refresh your recollection? A. Yes, sir.

Q. And it is on the check-up now that you have made here recently upon which you are largely relying? A. That is right.

Q. Is that also true with respect to your recollection and memory of what occurred here as between these parties, refreshing your recollection, and that you deduce that these things should have occurred because the record shows that certain action was taken?

A. Oh, no; not at all, not at all.

(Testimony of Frank L. Greenhouse.)

Q. I will ask you to state, Mr. Greenhouse, whether it is not a fact that between January 5th, the date upon which William Price died, and January 17th, the date upon which his body was returned to Kansas City, Missouri, for burial, [36] that Mrs. Elizabeth J. Price and George Burton came to your office and consulted you with respect to a stock transaction?

A. No, sir; not to me personally.

Q. Not with you? A. No, sir.

Q. Then you will also say that if it has been testified to here on several occasions by George Burton that he did just that, then he is in error in that regard?

A. I would distinctly say so. He could have come to the Edison Company. He did not come to me.

Q. No, I am speaking about a conversation with you. A. No, sir.

Q. Isn't it a fact that upon that occasion Mr. Burton and Mrs. Price presented to you seven stock certificates which have been introduced in this case here as Exhibits 1 to 7—and I have them—presented these stock certificates to you and told you at that time that Lester Hurley's name was included in those stock certificates by mistake and error, and wanted to arrange with you to have the stock transferred out of his name and into the names of Burton and Price as it should have been in the first place?

(Testimony of Frank L. Greenhouse.)

A. No, sir. The first I ever heard about this transfer was several months after it had taken place, from Kansas City, through the bank.

Q. Then Burton and Price just did not have any such [37] conversation as that with you?

A. No, sir; not personally.

Q. Concerning these stock certificates?

A. No, sir.

Q. Isn't it a fact, Mr. Greenhouse, that at that time you furnished to these people the assignment blanks which appear upon the back of these certificates by means of which the transfer was effected?

A. Not necessarily, no. Those are blanks you can get at the counter or anywhere. Those are ordinary assignment blanks.

Q. If that occurred and the assignment blanks were furnished by you to the people there at that time, you just do not have any recollection of it?

A. No, sir.

Q. When Defendant's Exhibit T, No. 13157, was presented to you at the time Mrs. Price was in your office did you at that time note that the signature, by reason of the provision in the order, only called for the signatures of Price and Burton?

Mr. Wynn: For the purpose of the record, let us refer to this document correctly. You called it Exhibit No. 13157.

Mr. McCormick: I said a dividend order number.

The Court: What is the exhibit number?

(Testimony of Frank L. Greenhouse.)

Mr. McCormick: Oh, the exhibit number, if you desire it, Mr. Wynn, is Defendant's Exhibit T. [38]

Mr. Wynn: I do not desire it. I want the record to show what it is.

The Court: It is specified now, gentlemen. Proceed. You may answer the question, Mr. Greenhouse.

Mr. McCormick: Please.

A. Mrs. Price came into the office and said that she desired to have here dividends still issued in her name on all the stock that she was joint tenants with. So I naturally had a clerk go out and check up the account. He came back. I asked how the title was standing now and I wrote this up for her and witnessed her signature. I told her that, of course, she would have to get Mr. Burton's signature, too.

Q. Did you ask her at that time as to whether she had arranged to have the interest of Lester Hurley, whose name the stock, you knew, had been previously issued in, eliminated? A. No.

Q. You did not ask that?

A. No. It was not my place to ask her a question like that.

Q. Now, Mr. Greenhouse, I notice here in this instrument that there has been some name written in here which was stricken out, which purports to be, in the first place, as "George E. Price, Jr."

A. No.

(Testimony of Frank L. Greenhouse.)

Q. And "E. Price, Jr.," has been stricken [39] out. A. No.

Q. Did you do that?

A. Yes, I did that, but it was not meant to be "George E. Price, Jr." Naturally, most every day the hundreds that I take care of, I naturally quickly wrote this, but I was probably pushed at the time, and instead of writing "George E. Burton," automatically I put the word "Price" down and crossed it out. That "Jt." means "joint tenants," not "Junior." Of course, ordinarily we don't put on "joint tenants with full rights of survivorship." That is understood. And then I told her to have that properly signed and sent back to the company.

Q. Mr. Greenhouse, I notice that there is a printed statement at the bottom of this dividend order which reads: "Dividend order must be signed by record owner of stock exactly as the name or names appear on the certificate." A. Yes.

Q. "If signed by agent, evidence of authority must accompany Dividend Order." A. Yes.

Q. That is the requirement made on the part of the company? A. Yes.

Q. And that appears on all the dividend orders that are issued by the company? [40]

A. Yes; I think so, for many, many years.

Q. I will ask you to state, Mr. Greenhouse, if this classification of checking here,—is involved in that is the matter of checking signatures to see that they are correct and proper for the purpose of

(Testimony of Frank L. Greenhouse.)

effecting a transfer either of the dividends or of the transfer of the stock itself? A. Oh, yes.

Q. That is done? A. Yes.

Q. If the signature appearing either on the dividend order or stock assignment was not identical with that which appeared on the face of the certificate, it would not be considered as regular or proper or acted upon by the company?

A. That is right.

Q. I call your attention, Mr. Greenhouse, to Plaintiff's Exhibits 1 to 7 and ask you to note on the face of these certificates, each one of them, as to how the name "Hurley" appears, as to how it is designated.

A. That says "Lester Hurley," "Lester Hurley," "Lester Hurley," "Lester Hurley," "Lester Hurley."

Q. Now, will you take a look at the assignments and see how the signature purports to have been signed on the assignment.

A. "Lester W. Hurley." [41]

Q. So in that instance they were not assigned in identically the same manner as that in which they appeared on the face, is that correct?

A. Yes, that appears correct.

The Court: Is that the same on all of them, referring now particularly to the assignment blanks only on the stock, and not to the dividend orders?

Mr. McCormick: That is right, just to the assignment blanks.

(Testimony of Frank L. Greenhouse.)

The Court: Any further questions?

Mr. McCormick: Just one or two more, your Honor.

Q. I call your attention to dividend order now numbered 12742, and I will ask you to look at the signature of "Lester Hurley" appearing thereon and note whether or not it seems to be spelled in the same manner as it appears in the instrument?

A. It does.

Q. You notice that "Hurley" is spelled "H-u-r-l-e-e-y" in the signature? A. No.

Mr. Wynn: I object to that as assuming something not in evidence, the way it is spelled. The court will recall the protracted testimony with reference to signatures.

Mr. McCormick: I am merely directing this witness' attention to that stipulation. [42]

The Court: Overruled.

A. It seems to me it is substantially the same way.

Q. (By Mr. McCormick): You construe that as being "H-u-r-l-e-y," do you? A. Yes, sir.

Q. Mr. Greenhouse, back in 1944, were you requested by the company to make a complete and diligent search of the files for the purpose of ascertaining whether or not there was any correspondence between your company and the Brotherhood State Bank or Mr. Alberti relative to the transfer of the certificates Exhibits 1 to 7 for plaintiff to which I called your attention?

(Testimony of Frank L. Greenhouse.)

A. Such a request may have been made to the department, to Mr. Showers, who had charge of the records. It was not made to me direct that I remember.

Q. Well, you did make such a search, did you not?

A. Oh, yes, I probably helped search for all these various things.

Q. And you found nothing?

A. Oh, I wouldn't say that.

Q. Concerning matters and letters concerning this transfer?

A. Oh, I think there was some correspondence with a bank in Kansas City there that they had.

Mr. Wynn: Do you want these exhibits, the correspondence [43] in evidence between the bank and the Edison Company?

Mr. McCormick: Oh, no.

Mr. Wynn: You are questioning the witness concerning it.

Q. (By Mr. McCormick): Mr. Greenhouse, I will ask you to state whether or not you now claim that these exhibits which are Plaintiff's Exhibits 17 and 18 were found in your files in your company's office?

A. I would prefer to have the assistant secretary, Mr. Showers, on there. He probably made the search for this kind of correspondence. Those would not be in my own particular files.

Q. You do not recall having testified in a deposition that you gave that you found no corres-

(Testimony of Frank L. Greenhouse.)

pondence with respect to this stock transfer, only correspondence of a recent date after the litigation arose; you do not recall that?

A. No; I can't remember that, but I remember that they only asked me one question or something like that, one or two questions, in the deposition. I don't think it had anything to do with that.

Mr. McCormick: Very well, that is all.

The Court: You may step down, Mr. Greenhouse.

Mr. Wynn: Nothing further. May I ask whether counsel or the court desires Mr. Greenhouse any further? He has been in rather ill health and I think wants to be dismissed.

Mr. McCormick: I would like to ask the witness one more [44] question, if I may, before he leaves.

The Court: You may.

Q. (By Mr. McCormick): Mr. Greenhouse, you have referred to the fact that it has been a long time since this matter occurred, 20 years?

A. Yes.

Q. Do you desire to tell the court now that you remember with any particularity as to when those dividend orders were filled in as to the names of the parties, either as to whether it was at the time that the dividend orders were delivered or when they were returned?

A. It was absolutely at the time they were in my office, sir. I always handle them in that way, thousands of them, where they had to go and get the signatures somewhere else.

Q. And you handled thousands of them?

A. Yes, sir; many thousands.

Mr. McCormick: Very well.

The Court: Are you so testifying because of your practice, or because you have a specific recollection of this particular item?

The Witness: Well, in this case I have a specific recollection, too, sir. Mr. Price was a very fine old gentleman, very old and sick, and I tried to give him a little extra attention. And I remember all the conversation very well with him there, a very sick man. I remember it very well. [45]

The Court: You may step down.

Mr. Wynn: May the witness be excused?

The Court: Is there any occasion to require any further attendance of Mr. Greenhouse?

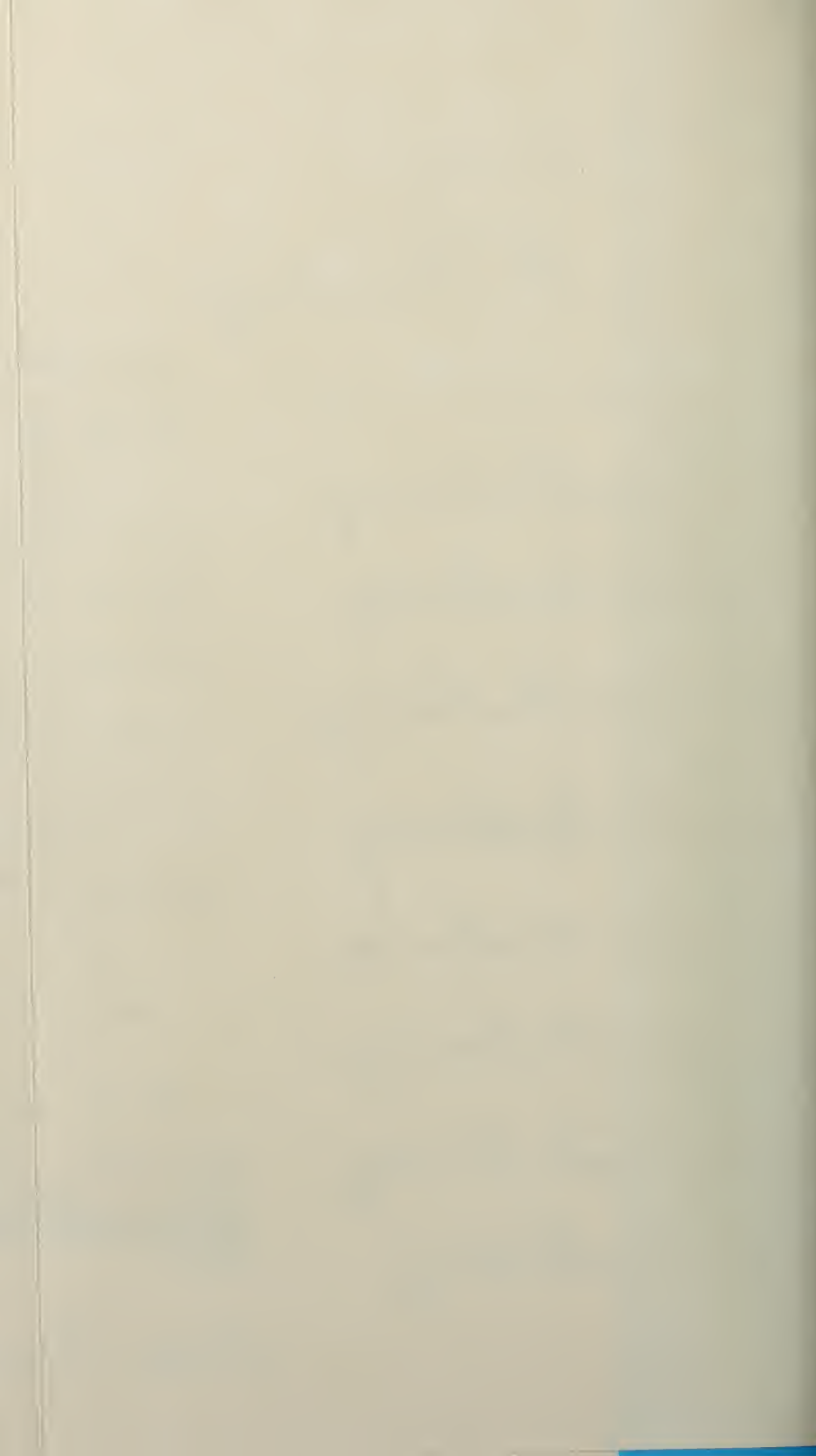
Mr. McCormick: I think not, your Honor.

The Court: You are excused.

The Witness: Thank you, sir.

The Court: Your next witness.

[Endorsed]: Filed October 25, 1951. [46]



PLAINTIFF'S EXHIBIT No. 20

Resolution of Board of Directors of
Southern California Edison Company

Adopted: January 25, 1929

Re: Issuance and Sale of Two Hundred Fifty-six
Thousand Shares of Common Stock, of the
total par value of Six Million, Four Hundred
Thousand Dollars.

Whereas, it is desirable that this corporation issue
and sell at par, Two Hundred Fifty-six Thousand
(256,000) shares of this corporation's Common
stock, of the par value of Twenty-five Dollars
(\$25.00) per share, and of the total par value of
Six Million, Four Hundred Thousand Dollars
(\$6,400,000), for the purpose of paying the cost
of new construction; and

Whereas, upon the issuance of said additional
Common stock, each of the Common stockholders
and of the Original Preferred stockholders of this
corporation will be entitled to subscribe for and
purchase a pro rata portion of said stock in accord-
ance with such stockholders' ownership of Common
and/or Original Preferred stock of this corporation.

Now, Therefore, Be It Resolved, that this cor-
poration issue and sell Two Hundred Fifty-six
Thousand (256,000) shares of its Common stock,
of the par value of Twenty-five Dollars (\$25.00)
per share, and of the total par value of Six Million,
Four Hundred Thousand Dollars (\$6,400,000).

Be It Further Resolved, that the Common and

the Original Preferred stockholders of this corporation of record on the 29th day of March, 1929, be given the opportunity to subscribe for and purchase said stock at par, Twenty-five Dollars (\$25.00) per share, payable in cash; that each holder of Common stock and each holder of Original Preferred stock be permitted to subscribe for and purchase such Common stock between April 22, 1929, and May 21, 1929, inclusive, at the rate of one share of such Common stock for every ten shares of Common stock and/or Original Preferred stock of the corporation owned by him on the 29th day of March, 1929; that no fractional shares be issued.

That a notice to holders of Common stock and of Original Preferred stock, of the offering herein authorized, be published in a daily newspaper in each of the cities of New York, Boston, Chicago and Los Angeles, on the following dates, to wit: March 15, 1929, March 22, 1929, and March 29, 1929.

That a letter be mailed to stockholders entitled to subscribe for said new issue of Common stock, on or before March 14, 1929, said letter to contain the terms and conditions of the offering, and such general information as the Chairman, or in the absence of the Chairman, the President, shall deem proper.

That warrants representing each stockholder's right to subscribe for and purchase said additional shares be issued and mailed or delivered on or before April 22, 1929, together with a letter setting

forth the terms and conditions upon which the said right to subscribe may be exercised, as set out in this resolution, to each stockholder having such right of record on said 29th day of March, 1929; that all of said warrants representing rights to subscribe for and purchase full shares be issued in the name of the stockholder and be assignable by endorsement and delivery of the warrant, and all of said warrants representing rights to subscribe for and purchase fractional shares be issued to bearer and be transferable by delivery; that all warrants bear a facsimile signature of the Chairman of the corporation, and be countersigned by an Assistant Secretary of the corporation, and contain thereon a subscription form; that the said warrants contain a statement that the same will become wholly void and of no value if the subscription rights represented thereby are not exercised on or before said May 21, 1929, and that subscriptions may be made for whole shares only, and such other matter as the Chairman, or in the absence of the Chairman, the President, shall determine upon.

That said warrants be received with subscriptions and cash payments made at Bankers Trust Company, 16 Wall Street, New York, and at the Investment Department of the corporation, 306 West Third Street, Los Angeles, California; that all subscriptions be in writing on the form provided on said warrant; that all full share warrants be transferable on the records of the corporation, and new warrants be issuable in lieu thereof at either of said places; that all warrants be exchangeable at

either of said places for warrants of different denominations as the holder may designate, aggregating the same total; that such organization, records and regulations be established to facilitate the transfer, exchange and receipt of warrants, the acceptance of subscriptions and the issuance of receipts therefor when fully paid, and thereafter the issuance of stock certificates, as the Chairman, or in the absence of the Chairman, the President, may determine upon.

Be It Further Resolved, that the President, or any one of the Vice-Presidents, be and they are hereby authorized and directed for and on behalf of the corporation to make application to the Railroad Commission of the State of California, for permission to issue and sell said Two Hundred Fifty-six Thousand (256,000) shares of the Common capital stock of this corporation, and upon securing the approval of said Commission to notify the New York Stock Exchange of said offering at least ten days prior to said 29th day of March, 1929.

Be It Further Resolved, that the President, or any one of the Vice-Presidents, and the Secretary, or any one of the Assistant Secretaries, be and they are hereby authorized and directed for and on behalf of the corporation, when the Railroad Commission of the State of California shall have authorized said issue, to make application to the said New York Stock Exchange for the listing of said additional Two Hundred Fifty-six Thousand (256,000) shares of Common capital stock, and to

execute any and all instruments of any kind or character whatsoever, and to perform any and all acts required, or which may be deemed necessary or proper to secure the listing of said stock, or to carry out any of the provisions of this resolution.

Be It Further Resolved, that B. W. Jones and George De B. Greene, be and they are hereby designated by this corporation to appear before the Committee on Stock List of said New York Stock Exchange, with authority to make such changes in said application for the listing of said Two Hundred Fifty-six Thousand (256,000) shares of the Common capital stock of this corporation, of the aggregate par value of Six Million, Four Hundred Thousand Dollars (\$6,400,000), or in any agreement relative thereto, as may be necessary to conform with requirements for listing.

I, O. V. Showers, Secretary of Southern California Edison Company, Ltd., do hereby certify that the foregoing is a full, true and correct copy of the Resolution of the Board of Directors of said corporation adopted at a meeting of said Board duly called and held on the 25th day of January, 1929.

[Seal] /s/ O. V. SHOWERS,

Secretary, Southern California
Edison Company, Ltd.

Admitted November 13, 1946.

PLAINTIFF'S EXHIBIT No. 22

Southern California Edison Company Ltd.
Edison Building

Los Angeles, California

March 29, 1944.

Thurman L. McCormick,
Suite 910 Rialto Building,
Kansas City, Missouri.

In Re: Estate of Mrs. Elizabeth J. Price,
Deceased.

Dear Sir:

We have for acknowledgement your letter of March 21st enclosing notice from Lester Hurley alleging illegality in the transfer of 575 shares of Edison Company Common Stock, from the names of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley as joint tenants to Mrs. Elizabeth J. Price and George E. Burton as joint tenants, and have placed transfer stops in accordance therewith. However, in the event of demand for transfer is made on the Company, we will require for our protection, a Court Restraining Order.

We are not able to decipher the name of the officer of the Brotherhood State Bank who signed the signature guarantee for the bank, but you no doubt can ascertain same by asking the bank to identify the signature.

The dividends on the stock were paid to Mrs. Elizabeth J. Price in accordance with a dividend

order signed by the three joint tenants and filed with the Company. At that time Lester Hurley gave his address as 5716 Scarritt, Kansas City, Mo. His signature was witnessed by Helen Burton, 1046 Ann Ave., Kansas City, Kans.

As requested, we are enclosing photostats of both sides of the certificates representing the 575 shares registered in the names of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley as joint tenants.

Will you kindly keep us advised with reference to any litigation or developments in connection therewith relative to the determination of the ownership of the stock in question.

Substantially the same information has been supplied Stanley, Stanley, Schroeder, Weeks & Thomas, attorneys for George E. Burton.

We are enclosing herewith our check No. 21847 for 30 cents payable to your order, in refund of excess amount forwarded for expense incident to photostatic copies of certificates.

Your very truly,

/s/ O. V. SHOWERS,
Asst. Secretary.

OVS:JK

Encl.

Air Mail

Admitted November 15, 1946.

PLAINTIFF'S EXHIBIT No. 23

Minute Book, Vol. 5, page 275.

Extracts From the Special Meeting of Board of Directors of Southern California Edison Company, Ltd.

Held on Wednesday, November 23, 1932, at the office of the Company, Room 1225, Edison Building, 601 West Fifty Street, Los Angeles, California, at 12:30 p.m.

Be It Resolved, that those certain resolutions respecting dividend policy, adopted by the Board of Directors of this corporation on October 12, 1923, and August 26, 1927, be and the same are, and each of them is, hereby repealed.

Whereas, it is the policy of this Board of Directors (1) to declare four dividends each year upon the outstanding Original Preferred capital stock of this corporation, and upon the outstanding Preferred stock, Series "C," 5½% of this corporation, payable January 15th, April 15th, July 15th and October 15th, respectively, to the owners in proportion to their respective holdings of such stock of record at the close of business on the 20th day of the month preceding the date fixed for payment, said payments being for the quarters ending December 31st, March 31st, June 30th and September 30th, respectively; (2) to declare four dividends each year upon the outstanding Preferred stock, Series "A," 7%, of this corporation, and upon the outstanding Preferred stock, Series "B,"

6%, of this corporation Payable March 15th, June 15th, September 15th and December 15th, respectively, to the owners in proportion to their respective holdings of such stock of record at the close of business on the 20th day of the month preceding the date fixed for payment, said payments being for the quarters ending February 28th, (29th in leap years), May 31st, August 31st and November 30th, respectively; and (3) to declare four dividends each year upon the outstanding Common stock of this corporation, payable February 15th, May 15th, August 15th and November 15th, respectively, to the owners in proportion to their respective holdings of such stock of record at the close of business on the 20th day of the month preceding the date fixed for payment, said payments being for the quarters ending January 31st, April 30th, July 31st and October 31st, respectively;

Now, Therefore, Be It and It Is Hereby Resolved, that dividends upon the various classes of capital stock of this corporation as hereafter declared, shall be payable at the times and to the stockholders hereinabove and hereinafter specified, unless otherwise expressly provided in the resolutions declaring such dividends.

Be It Further Resolved, that as to each share of Preferred stock full and final payment upon which shall be made after the first day of a dividend quarter, the dividend payable on such stock for the quarter during which such full and final payment was made, shall be determined, with reference to the dividend payable upon other stock of the same

class which was fully paid for on or previous to the beginning of the dividend quarter, by the ratio the time during such dividend quarter such stock was fully paid for bears to the whole of the dividend quarter. In all cases where the subscription contract under which such stock is purchased so provides, the first dividend declared on fully paid paid for Preferred stock shall be paid to the owner of record of such stock at the close of business on the last day of the month preceding the month in which payment is to be made.

Be It Further Resolved, that as to each share of stock sold to officers or employees the subscription for which shall have been accepted subsequent to the first day of the dividend quarter for which the dividend is declared, the dividend payable on such stock for the dividend quarter during which the subscription for such stock is received, shall be determined in all cases where the subscription contract so provides, with reference to the dividends payable upon other shares of stock which were fully paid for on or previous to the beginning of the dividend quarter, by the ratio the time during such dividend quarter such subscription for stock was in effect bears to the whole of the dividend quarter. The first dividend declared on each class of stock sold under such a subscription contract, shall be paid to the owner of record of such stock at the close of business on the last day of the month preceding the month in which payment of dividend is to be made.

Resolved, that on January 15, 1933, there be paid from the surplus earnings of this corporation to the holders of the Original Preferred stock of this corporation, outstanding on December 20, 1932, a dividend of 2% of the par value of such stock, the payment of such dividend to be made in accordance with the provisions of resolution of this Board heretofore this day adopted.

Resolved, that on January 15, 1933, there be paid from the surplus earnings of this corporation to the holders of Preferred stock, Series "C," 5½%, of this corporation, outstanding on December 20, 1932, and such additional Preferred stock, Series "C," 5½%, as shall be outstanding on December 31, 1932, a dividend of 1.375% of the par value of such stock, the payment of such dividend to be made in accordance with the provisions of resolution of this Board heretofore this day adopted, such dividend to be proportionate in certain cases in the manner specified in said resolution.

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 25

November 30, 1945.

Southern California Edison Co., Ltd.,
Edison Building,
Los Angeles, California.

Attention: B. F. Woodward,
General Solicitor.

Re: Hurley Dividends.

Gentlemen:

Under date of October 15th, I wrote you fully relative to the dividends due on stock owned by Lester W. Hurley in your company, a portion of which stock was involved in litigation in the case of Burton vs. Hurley, #4974 Civil (Kansas).

Thereafter under date of November 7th, I received a reply to my letter of October 31st, 1945, wherein you advised me that this matter had been called to the attention of your bonding company and that as soon as any definite conclusion regarding the matter was reached, that you would get in touch with me in the hope of working out this matter satisfactorily. Since receiving your letter on November 7th, I have had no further advice concerning this matter, and I am at a loss to understand why so much time is required to reach a conclusion in this matter.

I have no objection to your taking all necessary time for the purpose of reaching a deliberate conclusion, but it does seem to me that a period of

six weeks should be adequate. I therefore must insist that I be advised within a reasonable time as to the position you desire to take in this matter.

Trusting that I may hear from you promptly I am

Very truly yours,

THURMAN L. McCORMICK,
910 Rialto Building,
Kansas City, Missouri.

TLM:EC

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 26

Pacific Indemnity Company
Los Angeles

Milton R. Johnson, President
621 South Hope Street, Los Angeles 14

December 7, 1945.

Mr. Thurman L. McCormick,
Attorney at Law,
Suite 910 Rialto Bldg.,
Kansas City, Missouri.

Re: Our Claim 5252—Bond 109186
Forgery—Sign. Lester Hurley
Southern California Edison Company,
Ltd., et al.

Dear Sir:

You letter of November 30, 1945, to Southern California Edison Company, Ltd., attention B. F.

Woodard, General Solicitor, has been referred to us for attention. Please be advised that we are referring this matter to our legal representatives in Kansas City, Missouri. We are requesting them to contact you as soon as they have had an opportunity to assimilate the data which we are forwarding to them. I trust that they will contact you within a reasonable time.

Very truly yours,

/s/ PHILIP B. KEHR,
Attorney.

PBK:C

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 27

December 20, 1945.

Pacific Indemnity Company,
621 South Hope Street,
Los Angeles 14, California.

In Re: Claim 5252—Bond 109186

Forgery—Sign. Lester Hurley
Southern California Edison Com-
pany, Ltd., et al.

Gentlemen:

Your letter of December 7, 1945, received some time ago, wherein you advised that the above-entitled matter had been referred to you for atten-

tion by B. F. Woodard, General Solicitor of the Southern California Edison Company, Ltd. Further that you were referring the matter to your legal representatives in Kansas City, Missouri, with the expectation that they would contact me as soon as they had had an opportunity to assimilate the data which you were forwarding to them.

I am writing to advise that I have received no communication from your representatives in Kansas City, Missouri, relative to this matter, which I am at a loss to understand.

I do not know whether you are aware of the fact that this matter was called to the attention of Southern California Edison Company, Ltd., under date of October 15th. Since that date I have made several requests for declaration as to the position the Southern California Edison Company desires to take in this matter or the position the Bonding Company desires to adopt. As indicated above, I have to date received no definite statement, one way or the other, as to what, if anything, you propose to do relative to this claim.

Now, as the time that has elapsed indicates, I am quite desirous of giving the Southern California Edison Company or your Company adequate opportunity to determine, with due deliberation, the position you desire to take, but I do feel that adequate time has elapsed to enable you to come to some conclusion. I am, therefore, writing to you at this time for the purpose of advising you that I shall expect a prompt declaration on your part as to what

you desire to do relative to this claim. Failing to receive the same without further delay will be construed by me as a declaration on your part of a refusal to recognize the same and will be acted upon accordingly.

Trusting I may hear from you promptly, I am,

Yours very truly,

THURMAN L. McCORMICK,

TLMcC:lmv

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 28

Pacific Indemnity Company

Los Angeles

Milton R. Johnson, President

621 South Hope Street, Los Angeles 14

December 27, 1945

Mr. Thurman L. McCormick,

Attorney at Law,

Suite 910 Rialto Bldg.,

Kansas City, Missouri.

Re: Our Claim 5252—Bond 109186

Forgery—Sign. Lester Hurley

Southern California Edison Company Ltd.,
et al.

Dear Sir:

This will acknowledge receipt on this date of your letter of December 20, 1945.

The firm of Watson, Ess, Groner, Barnett & Whittaker is representing the Pacific Indemnity Company in this matter and we are forwarding to their attention a copy of your letter of December 20, 1945.

Very truly yours,

/s/ PHILLIP B. KEHR,
Attorney.

PBK:C

cc Watson, Ess, Groner, Barnett & Whittaker

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 29

January 8, 1946.

Southern California Edison Company, Ltd.,
Edison Building,
Los Angeles 53, California.

Attention: Mr. B. F. Woodard,

Gentlemen:

Re: Lester W. Hurley Dividends

Under date of October 15, 1945, I asked you to furnish me "at your early convenience, with a statement as reflected by the books of your company showing all dividends and stock rights paid and delivered to Elizabeth J. Price on the afore-said stock as well as other stock standing in the name of Lester W. Hurley from the 20th day of November, 1928, to date of the death of Elizabeth J. Price, namely December 27th, 1943."

To date you have not furnished me with the statement requested, as indicated above. I am informed by the attorneys to whom this matter was referred by your Bonding Company, Pacific Indemnity Company, that such a statement as to dividends and stock rights has been provided them. This, of course, does not serve my purpose, and I am therefore obliged to repeat my request.

I would appreciate receiving this information without further delay, and will thank you to give me a prompt reply concerning the same.

I am,

Yours very truly,

THURMAN L. McCORMICK.

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 30

Southern California Edison Company, Ltd.

Edison Building

Los Angeles 53, California

Law Department

January 18, 1946.

Thurman L. McCormick, Esq.,
Suite 910, Rialto Building,
Kansas City 6, Missouri,

Re: Lester W. Hurley Dividends

Dear Mr. McCormick:

With respect to your request for a statement of

dividends and stock rights paid on the stock formerly standing in the name of Elizabeth J. Price, I am sure you will appreciate that, in view of the fact that the bonding company has employed counsel to pass on the matter, it would probably be more in order to have you request the information from their attorneys.

I would not want to do anything that would in anywise prejudice the Company's relations with the bonding company, and if it agreeable to their attorneys that you have the information requested, there would be no objection on our part. Therefore, I suggest that you confer with their attorneys to ascertain whether they have any objection to your having this information, and if they have no objection, request that they furnish the information to you.

Very truly yours,

/s/ B. F. WOODARD,
General Solicitor.

Admitted November 3, 1948.

PLAINTIFF'S EXHIBIT No. 31

Watson, Ess, Barnett & Whittaker
15th Floor, Dierks Building
Kansas City 6, Missouri

February 8, 1946.

Mr. Thurman L. McCormick,
Attorney at Law,
910 Rialto Building,
Kansas City 6, Missouri.

Dear Sir:

Pursuant to your request we advise you that the Southern California Edison Company paid to Elizabeth J. Price on February 15, 1929, a dividend of \$287.50 on 575 shares of common stock, issued November 20, 1928, pursuant to dividend order No. 12742. Thereafter, on the same number of shares issued February 19, 1929, it paid her dividends to and including December 27, 1943, in the total sum of \$15,108.12, pursuant to dividend order No. 13157. In each of the years 1929 to 1931, inclusive, it also issued to her 575 common stock rights.

On 88 shares of common stock issued November 26, 1928, it paid her dividends for the years 1929 to 1943 inclusive, in the total sum of \$2,356.20, pursuant to dividend order No. 12743. On the same stock, in each of the years 1929 to 1931, inclusive, it issued to her 88 common stock rights.

On 191 shares of preferred Series "B" 6% stock issued November 26, 1928, it paid her dividends during the years 1929 to 1943, inclusive in the total sum of \$4,297.50, pursuant to dividend order No. 12743.

We will communicate with you again as soon as we have completed our study of Mr. Hurley's claim and are advised of our client's wishes. Please accept our apologies for our inability to sooner advise you of the above figures.

Very truly yours,

WATSON, ESS, BARNETT &
WHITTAKER,

By /s/ DOUGLAS STRIPP.

DS/is

Admitted November 3, 1948.

DEFENDANT'S EXHIBIT C

Notice

Notice Is Hereby Given to the Southern California Edison Co. Ltd., and all officers, transfer agents and servants, that certificates Nos. AO 59630; AO59630 and A 8752 to A 8756, inclusive, issued under date of November 20, 1928, to Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants, and thereafter cancelled under date of February 2, 1929, were illegally, unlawfully, and fraudulently cancelled without the knowledge, consent or authorization of Lester Hurley, and without the true and legal endorsement of Lester Hurley on said certificates.

You and each of you are further notified that certificates No. AO 61852 and A 9230 to A 9234, inclusive, issued to Elizabeth J. Price and George E. Burton under date of February 19, 1929, in the place and stead of the certificates first above described, were illegally and unlawfully issued without the surrender of the original certificates properly endorsed, and therefore constitute a fraud upon Lester Hurley and his true and lawful ownership in the 575 shares of common stock represented thereby.

You and each of you are further notified and requested to make no further transfers of the cer-

tificates last above described until the legal right and ownership of the undersigned stockholder in said certificates has been adjudged and determined.

Signed and dated at Kansas City, Missouri, March 20th, 1944.

/s/ LESTER HURLEY.

State of Missouri,
County of Jackson—ss.

On this 20th day of March, 1944, before me, N. R. Fischer, a Notary Public, personally appeared Lester Hurley to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in Kansas City, Missouri, the day and year last above written.

[Seal] /s/ N. R. FISCHER,
Notary Public.

My Commission expires May 31, 1946.

Admitted November 12, 1946.

344

FORM—INV. 21-A REV.

DEFENDANT'S EXHIBIT T

KINDLY SIGN AND RETURN AT ONCE

13157

SOUTHERN CALIFORNIA EDISON COMPANY
DIVIDEND ORDER

Date LA. 192.

Southern California Edison Company,
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to Mrs Elizabeth J.

Price.

at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of

Mrs Elizabeth J. Price and George
E. Price Jr B. Burton
on the books of your company.

Stock how held—

Original Preferred Preferred Series A
Common Preferred Series B

Classified By MIX 3-15-33
Serials Cont'd By Mal 3-15-33
First Check List By Rm 3/16
Second Check List By Rm 4/16
Entered in Ledger By Mal

X Signature Mrs Elizabeth J. Price
Address 1301 West 52nd St

X Signature George E. Burton
Address 1046 Ann Ave

Kansas City Kan

Witness:
Signature Wm. H. H. H.

Address

Address for sending dividends: 1301 - West 52nd St
Los Angeles

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Admitted November 3, 1946.

NAB 18 1946

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 116, inclusive, contain the original Complaint; Answer of Defendant; Defendant's Memorandum of Points and Authorities; Pre-Trial Stipulation; Supplemental Answer of Defendant; Findings of Fact and Conclusions of Law After Trial Following Appeal; Judgment; Motion of Defendant for New Trial; Order Amending Findings of Fact and Denying Defendant's Motion for a New Trial; Notice of Appeal; Statement of Points on Which Defendant and Appellant Intends to Rely on Appeal; Designation of Contents of Record on Appeal; Two Motions and Orders Extending Time to File Record on Appeal and Stipulation re Designation of Contents of Record on Appeal which, together with original plaintiff's Exhibits 1 to 20, inclusive, 22, 23, and 25 to 31, inclusive, and original defendant's exhibits A, C, and T and original Plaintiff's exhibit 1 on retrial, and copy of reporter's transcript of proceedings on November 12, and 13, 1946, and November 3, 1948, transmitted herewith, constitute the record on appeal to the United State Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 26th day of October, A.D. 1951.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13143. United States Court of Appeals for the Ninth Circuit. Southern California Edison Company, Limited, a corporation, Appellant, vs. Lester W. Hurley, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 27, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 13143

LESTER W. HURLEY

Appellee,

vs.

SOUTHERN CALIFORNIA EDISON COM-
PANY, LIMITED, a Corporation,
Appellant.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON
APPEAL

On appeal from the judgment herein entered pursuant to Findings of Fact and Conclusions of Law filed herein on April 26, 1951, appellant intends to rely upon the following points:

A. The evidence shows without conflict, that the following Findings of Fact are not supported by the evidence:

1. Said evidence shows that William Price and Elizabeth Price, prior to November 19, 1928, owned as joint tenants, 575 shares of common stock, and that Elizabeth J. Price owned 191 shares of Series B, 6%, preferred stock, and 88 shares of common stock of defendant Company. Finding II, that prior to said date, William Price was the sole owner of any of this stock, is not supported by the evidence.

2. The evidence shows that both William Price and Elizabeth J. Price were donors, and that the gift was made subject to the express provision that Elizabeth J. Price was to receive and use the dividends until appellant received orders to the contrary. The Findings III and IV that William Price, alone, made the gift referred to, and that it was unqualified, and that said Price merely expected to arrange for all dividends to be paid to and retained and used by Elizabeth J. Price, is contrary to the evidence.

3. The evidence shows that the dividend orders were fully made out when signed by appellee, and that on their face they disclosed to him their purpose and the use to which they were to be put. The evidence does not support the Finding (V) that appellee was requested to sign the dividend orders in blank or that he did not know or understand the purpose for which his signatures were requested, or the use intended to be made of the documents he then signed.

4. The evidence does not show that appellant knew, or had reason to know, that Elizabeth J. Price, alone, would benefit from such payments, and that she would not account to, or pay, or otherwise distribute to George E. Burton, or appellee, any part of such payments—there being no evidence whatsoever to show that appellant knew, or had reason to know, or how Elizabeth J. Price was, in fact, using payments made to her. The Findings in paragraph XII to the contrary effect, are not supported by the evidence.

5. The evidence shows that appellee had abundant opportunity to know, and every reason to know, of his ownership of an interest in stock of appellant Company, and of the nature and purpose and effect and use to be made of the dividend orders signed by him, and of the existence of the assignments made by him of his interest in 575 shares of common stock and of the facts set forth in paragraphs III, VI, IX, X, XI and XII many years prior to March 18, 1944. The Findings of Fact to the contrary (XIII) are not supported by the evidence. Additional Findings of Fact in paragraph XIII of the Findings to the effect that he signed blank dividend orders without knowledge or understanding as to the purpose or effect of his signature, are likewise not supported by the evidence.

6. The evidence does not show any disaffirmance by appellee of the dividend orders. Finding to the contrary (XIV) is not supported by the evidence.

7. The evidence shows that appellee authorized and consented to the payment of dividends to Elizabeth J. Price and after the assignment by him of the 575 shares was not, as against this appellant, an owner of any interest therein or entitled to receive any part of the dividends and stock rights paid and delivered to Elizabeth J. Price. The Findings to the contrary (XVII) are not supported by the evidence.

8. The evidence does not show appellant knew, or had reason to know, that Elizabeth J. Price, alone, would benefit from such payments and performance, and would not account to or pay, or otherwise distribute to either George E. Burton or appellee, any part thereof. The Findings to the contrary (XX) are not supported by the evidence.

9. The evidence shows that appellee had notice of and knowledge of, and authorized and consented to the payment and delivery by appellant to Elizabeth J. Price of the dividends and stock rights referred to in paragraph XIX of the Findings, and that he was not entitled to receive any part thereof until he gave notice to appellant of his desire to receive one-third of such payments. The Findings to the contrary (XXII) are not supported by the evidence.

10. The evidence shows that appellee knew, and had every reason to know, of his interest in 191 shares, Series B, 6% preferred and 88 shares of common stock of appellant Company and of the nature and purpose and effect and use to be made of fully made out dividend orders signed by him. The Findings to the contrary (XXIII) are not supported by the evidence.

11. The evidence does not show any disaffirmance by appellee of the dividend orders referred to in paragraph XXIV of the Findings and the Findings to that effect in said paragraph are not supported by the evidence.

12. The evidence shows that appellee knew, and had reason to know, of the execution of said dividend orders by him, the nature of such documents, and the purpose for which they were to be used from the time he signed the same, and that any disaffirmance thereof by him was therefore not made within a reasonable time after reaching his majority. The Findings to the contrary (XXIV) are not supported by the evidence.

13. The evidence shows that appellant had reason to believe that payment of dividends and stock rights to Elizabeth J. Price were so made by it knowing, and having reason to know, that such payments were being made in accordance with the express terms of conditions attached by the donors of such stock to the three joint tenant donees, and according to the written directions of said three donees. Any Findings, express or implied to the contrary, are not supported by the evidence.

14. That any express or implied Finding, paragraph XXVII, that appellant knew, or had reason to know, of any fraud being practiced upon appellee for any reason whatsoever, is not supported by the evidence.

15. There is no evidence that any fraud was ever practiced upon appellee by either Elizabeth J. Price or George E. Burton, the evidence showing only that appellee was not informed by the donors of the nature of the gift made by them to him, or that if informed thereof, at the time of the trial

he had forgotten that he had been so informed. Any express or implied Finding of Fact to the contrary in paragraph XXVII, or in any other paragraph of said Findings, are not supported by the evidence.

B. The Findings of Fact do not support the Conclusions of Law nor the judgment herein, and the Court made errors of law in not holding that:

1. The execution of the dividend orders and the assignment forms covering the 575 shares of common were not subject as against this appellant to disaffirmance within a reasonable time after reaching his majority.

2. Appellee did not, as a matter of law, make any disaffirmance within a reasonable time after reaching majority of either his execution of the dividend orders, or of the assignment forms covering the 575 shares of common stock.

3. Insofar as appellee continued to be an owner, as joint tenant, of the stock referred to in the complaint herein, Section 1475, Civil Code of the State of California, protects the defendant in the payments it made to Elizabeth J. Price, one of the joint tenants, or such dividends and stock rights for the reason that (1) no fraud was practiced upon appellee, (2) if any such fraud was practiced upon appellee, appellant did not know, or have any reason to know, of such fraud, and had every reason to know that the appellee had consented to the making of such payments to his co-joint tenant.

4. The evidence showing that the gift to the three joint tenants was made subject to the condition, at the time the gift was made, that payments of dividends and stock rights on all of said stock should be made to Elizabeth J. Price until appellant received orders to the contrary from one or all of the joint tenants, it follows, as a matter of law, that such condition operated as a matter of law, as a limitation upon the extent of the gift and that Elizabeth J. Price had the legal right as against this appellant to receive payment of all such dividend and stock rights until appellant was informed by one or all of the joint tenants that it should no longer make all such payments to Elizabeth J. Price.

5. As the evidence shows the assignments were executed in Kansas, the law of Missouri has no bearing whatsoever on the questions of the validity and effect of said assignments. The finding (Conclusion of Law III) that plaintiff executed the assignments in Missouri is not supported by the evidence.

It follows that appellant was entitled to judgment.

October 23, 1951.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Appellant.

[Endorsed]: Filed October 27, 1951.

[Title of Court of Appeals and Cause.]

STIPULATION RE PREPARATION OF TRANSCRIPT OF RECORD ON APPEAL

It is hereby stipulated by and between the parties hereto through their respective attorneys of record the undersigned as follows:

That whereas appellant has designated for inclusion in the transcript of record plaintiff's exhibits Nos. 1 to 7 inclusive, being certificates of stock issued by appellant corporation covering 575 shares of common stock, together with stock assignment forms attached, it is hereby stipulated that in the preparation of the transcript of record only plaintiff's exhibit 1 need be printed in full showing all notations appearing on the front and back of said assignment (including power of attorney) form. As to said exhibits 2 and 7 inclusive, it is hereby stipulated that said exhibits are identical with said exhibit No. 1, save and except as to number of shares designated in each such certificate and assignment form and other immaterial matters.

It is further stipulated that whereas it is anticipated that appellee may designate for inclusion in said transcript plaintiff's exhibits Nos. 14 and 20, that No. 14 if so designated, may be included by reference only as being identical to Exhibits A, B, C and D which are attached to and made a part of Findings of Fact and Conclusions of Law of the trial court in the action here on appeal. As to exhibit No. 20, being three resolutions passed by di-

rectors of appellant corporation on January 25, 1929, December 27, 1929, and December 19, 1930, respectively, if so designated, it is stipulated that only the resolution of January 25, 1929, need be printed in full and that as to the remaining two resolutions it is stipulated they contain the same language as to notice to stockholders and the representation of stock rights by warrants to be issued in the name of the stockholder and subject to endorsement by said stockholder as is contained in said resolution adopted January 25, 1929.

Dated October 24, 1951.

THURMAN L. McCORMICK,
HAROLD EASTON,
By /s/ HAROLD EASTON,
Attorneys for Appellee.

FULCHER & WYNN,
By /s/ CAROL G. WYNN,
Attorneys for Appellant.

So Ordered.

/s/ WM. DENMAN,
Chief Judge.
/s/ HOMER T. BONE,
/s/ WM. E. ORR,

United States Circuit Judges.

[Endorsed]: Filed October 30, 1951.